

**New Hampshire Department of Revenue Administration  
109 Pleasant Street, Concord, NH 03301**

**TECHNICAL INFORMATION RELEASE  
TIR 2013-007 Date September 10, 2013**

A Technical Information Release is designed to provide immediate information regarding tax laws administered by the Department or the policy positions of the Department as a service to taxpayers and practitioners. A Technical Information Release represents the position of the Department on the limited issues discussed herein based on current law and Department interpretation. For the current status of any tax law, practitioners and taxpayers should consult the source documents (i.e., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.). Questions should be directed to Central Tax Services at (603) 230-5920.

**Determining New Hampshire Medicaid Enhancement Tax Liability on  
Revenue from Certain Outpatient Hospital Services**

The New Hampshire Medicaid Enhancement Tax (“MET”) is a tax on the “net patient services revenue of a hospital for the hospital’s fiscal year ending during the first full calendar year preceding the taxable period.” See RSA 84-A:2. “Net patient services revenue” is defined as “the gross charges of the hospital less any deducted amounts for bad debts, charity care, and payor discounts” and includes “revenues received from the state’s uncompensated care account and revenues received from all payers of inpatient and outpatient patient care.” See RSA 84-A:1, IV-a. “Gross charges of the hospital” is defined as “the total charges by the hospital for inpatient hospital services and outpatient hospital services at the hospital’s established rates for services provided to patients.” See Rev 2301.04. “Hospital” is defined as “general hospitals and special hospitals for rehabilitation required to be licensed under RSA 151 that provide inpatient and outpatient hospital services, but not including government facilities.” See RSA 84-A:1, III. When used below, the term “hospital” shall mean “hospital” as defined in RSA 84-A:1, III.

In response to inquiries from hospital-taxpayers regarding outpatient hospital services, the Department of Revenue Administration (“Department”) issues this Technical Information Release (“TIR”) to provide guidance on determining the MET liability for revenue from certain outpatient hospital services, as defined in Rev 2301.08. The Department adopted the definition of “outpatient hospital services” in Rev 2301.08 using the federal definition of “outpatient hospital services” in 42 C.F.R. 440.20 to ensure access to Federal Financial Participation (“FFP”) because MET is a health care-related tax<sup>1</sup>. This TIR concerns revenue from specific outpatient hospital services and does not address revenue from inpatient hospital services, which is also part of the MET tax base. Most outpatient hospital services are reimbursable under Medicaid, regardless of the payor. However, some outpatient hospital services are not reimbursable under Medicaid but are still provided by hospitals as “outpatient hospital services,” as defined in Rev 2301.08. This TIR only provides guidance on revenue from outpatient hospital

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<sup>1</sup> Under federal law and regulations, states can use health care-related taxes to fund a portion of their share of Medicaid program costs. See generally 42 C.F.R., part 422, subpart B; 42 U.S.C. §1396b(w). Federal regulations identify nineteen (19) separate classes of health care items or services (inpatient and outpatient hospital services). As MET is a health care-related tax used to access FFP, the State looks to the State Plan and federal law as guidance for administration of the tax.

services reimbursable under Medicaid, regardless of the payor. Revenue from outpatient hospital services not reimbursable under Medicaid but provided by hospitals as “outpatient hospital services,” as defined in Rev 2301.08, is included in the hospital’s gross charges and is also taxable under the MET.

**A. MET on Revenue from Outpatient Hospital Services Reimbursable under Medicaid, Regardless of the Payor, is Based on How the Outpatient Hospital Service is Provided, Billed and Reimbursed.**

When a hospital provides an outpatient hospital service under a licensed outpatient hospital department and bills for that service under its hospital NH Title XIX Medicaid ID Number, hospital National Provider Identification Number, and/or hospital Provider Transaction Access Number, the hospital claims reimbursement from New Hampshire Medicaid using cost-based reimbursement and is required to bill New Hampshire Medicaid for the outpatient hospital service using either a UB-04 claim form, a CMS 1500 claim form, or both depending on the nature of the service or procedure provided. Third-party payors also use the UB-04 and CMS 1500 forms for reimbursement claims by hospitals. In addition, hospitals are required to use the UB-04 claim form to seek cost-based reimbursement for the technical component, or “facility fee” portion, of most outpatient hospital services when billing New Hampshire Medicaid for reimbursement. Outpatient hospital services submitted for reimbursement on a UB-04 claim form include preventative, diagnostic, therapeutic, rehabilitative, or palliative services furnished to outpatients at a facility that is licensed as an outpatient hospital department. **In addition to revenue from outpatient hospital services not reimbursable under Medicaid but provided by hospitals as outpatient hospital services per Rev 2301.08, revenue from outpatient hospital services for which cost-based reimbursement would be available from Medicaid is also taxable under the MET, regardless of the patient receiving the service or the payor for that service.** While other payors – Medicare, third-party insurance payors, and private payors – do not always follow the same “cost-based” distinction as Medicaid, federal guidance on permissible health care-related taxes provides that, if it is an outpatient hospital service reimbursable under Medicaid, it is the way an outpatient hospital service is billed and reimbursed for purposes of Medicaid reimbursement that governs whether the service revenue is taxable under the MET, regardless of the payor or source. While there are national standards for billing and coding procedures, there are no national standards for reimbursement methodology or rates. Reimbursement methodologies and rates for private third-party payors are determined by negotiation between the payor and the provider.

In addition to the UB-04 claim form, hospitals are required to use the CMS 1500 claim form to seek reimbursement for the professional service component of an outpatient hospital service under the fee schedule established by New Hampshire Medicaid. The professional component of an outpatient hospital service accounts for consultation, interpretation, diagnosis, and evaluation and management by physicians or other highly trained medical professionals. **Revenue from the professional service component of an outpatient hospital service subject to fee-based reimbursement under Medicaid is not taxable under the MET, regardless of the payor. However, there is an exception to this “fee-based” rule for laboratory services,** which are reimbursed pursuant to a fee schedule but the revenue from which is taxable under the MET as set forth in further detail below.

## **B. MET Liability on Revenue from Specific Outpatient Hospital Services**

The Department has received inquiries from hospital-taxpayers as to whether the revenue from specific outpatient hospital services is taxable for purposes of determining their MET liability. Utilizing the general principles set forth above, the taxability of revenue from specific outpatient hospital services is addressed below. This list is not exhaustive, as other outpatient hospital service revenue is taxable under the MET. This list only includes revenue from specific outpatient hospital services that hospital-taxpayers have sought the Department's guidance on.

### **1. Adult Day Care Revenue:**

- a. Not taxable under the MET. Adult day care services are provided under a separate license from the hospital and, therefore, are not billed by the hospital for reimbursement as an outpatient hospital service.

### **2. Ambulance Services Revenue:**

- a. Not taxable under the MET, if services are provided under a separate license from the hospital and billed under a separate provider number from the hospital for reimbursement.

### **3. Ambulatory Surgical Center Revenue:**

- a. Taxable under the MET, if the center is a licensed outpatient hospital department and bills its services under the hospital provider number as outpatient hospital services for which cost-based reimbursement would be available under Medicaid, regardless of the payor.
- b. Not taxable under the MET, if the center is separately licensed from the hospital and its services are billed under a separate provider number from the hospital for reimbursement.

### **4. Dental Service Revenue:**

- a. Taxable under the MET:
  - i. The professional fee portion, if dental services are provided under the hospital license and the hospital bills the services under the hospital provider number as outpatient hospital services for which cost-based reimbursement would be available under Medicaid, regardless of the payor; and
  - ii. The technical component or the “facility fee” portion, if dental services are provided as outpatient hospital services and billed under the hospital provider number as outpatient hospital services for which cost-based reimbursement would be available under Medicaid, regardless of the payor.
- b. Not taxable under the MET, if dental services are provided through a practice that is separately licensed from the hospital and billed under a separate provider number from the hospital for reimbursement.

### **5. Diabetes Education Revenue:**

- a. Taxable under the MET, if diabetes education is provided as an outpatient hospital service and billed under the hospital provider number as an outpatient hospital service for which cost-based reimbursement would be available under Medicaid, regardless of the payor.

- b. Not taxable under the MET, if diabetes education is provided outside of the hospital and billed under a separate provider number from the hospital for reimbursement.
6. Durable Medical Equipment (“DME”) Revenue:
- a. Taxable under the MET, if DME is provided as an outpatient hospital service and billed under the hospital provider number as an outpatient hospital service for which cost-based reimbursement would be available under Medicaid, regardless of the payor.
  - b. Not taxable under the MET, if DME is enrolled as a DME provider for Medicaid reimbursement separate from the hospital, bills Medicaid under its DME provider number, and is reimbursed by Medicaid on a fee basis.
7. Emergency ALS Training Program Revenue:
- a. Taxable under the MET, if training service is provided as an outpatient hospital service and billed under the hospital provider number as an outpatient hospital service for which cost-based reimbursement would be available under Medicaid, regardless of the payor.
  - b. Not taxable under the MET, if training service is provided under a separate license from the hospital and billed under a separate provider number from the hospital for reimbursement.
8. Laboratory Service Revenue:
- a. Taxable under the MET. Laboratory services provided as part of an outpatient hospital visit are reimbursed through an add-on fee and are paid in addition to the percentage of cost payment for the outpatient visit. Some hospitals have claimed that only the revenue from laboratory services provided with an additional outpatient hospital service is taxable under the MET and that revenue from a laboratory service in and of itself is not taxable under the MET. Be advised that all revenue from laboratory services provided as an outpatient hospital service, billed to Medicaid as an outpatient hospital service and reimbursed as an outpatient hospital service is taxable under the MET, regardless of the payor. In addition, freestanding laboratory services, pursuant to 42 C.F.R. § 433.56, do “not include laboratory or x-ray services provided in a physician’s office, hospital inpatient department, or hospital outpatient department.”
9. Nutritional Consultation Revenue:
- a. Taxable under the MET, if nutrition consultation is provided as an outpatient hospital service and billed under the hospital provider number as an outpatient hospital service for which cost-based reimbursement would be available under Medicaid, regardless of the payor.
  - b. Not taxable under the MET, if nutrition consultation is provided outside of the hospital and billed under a separate provider number from the hospital for reimbursement.
10. Physician Service Revenue:
- a. Taxable under the MET:
    - i. The professional fee portion, if physician provides services under the hospital license and the hospital bills the services under the hospital provider number as an outpatient hospital service for which cost-based

- reimbursement would be available under Medicaid, regardless of the payor;
- ii. The technical component or the “facility fee” portion, if physician service is provided as an outpatient hospital service and billed under the hospital provider number as an outpatient hospital service for which cost-based reimbursement would be available under Medicaid, regardless of the payor; and
  - iii. Emergency room physician professional fees, regardless of how the hospital bills or does not bill for the professional fees, as the hospital is able to bill emergency room physician professional fees under the hospital provider number as an outpatient hospital service for which cost-based reimbursement would be available under Medicaid, regardless of the payor.
- b. Not taxable under the MET, if physician service is provided through a practice that is separately licensed from the hospital and billed under a separate provider number from the hospital for reimbursement.

**11. Podiatry Service Revenue:**

- a. Taxable under the MET:
  - i. The professional fee portion, if podiatry services are provided under the hospital license and the hospital bills the services under the hospital provider number as outpatient hospital services for which cost-based reimbursement would be available under Medicaid, regardless of the payor; and
  - ii. The technical component or the “facility fee” portion, if podiatry services are provided as outpatient hospital services and billed under the hospital provider number as outpatient hospital services for which cost-based reimbursement would be available under Medicaid, regardless of the payor.
- b. Not taxable under the MET, if podiatry services are provided through a practice that is separately licensed from the hospital and billed under a separate provider number from the hospital for reimbursement.

**12. Psych DPU Revenue:**

- a. Taxable under the MET because this is an inpatient hospital service and not an outpatient hospital service.

**13. Retail Pharmacy Revenue:**

- a. Not taxable under the MET because retail pharmacies are separately licensed from the hospital and have separate provider numbers.

**14. Rural Health Clinic Revenue:**

- a. Taxable under the MET, if rural health clinic operates as a department of the hospital and bills under the hospital provider number as an outpatient hospital service for which cost-based reimbursement would be available under Medicaid, regardless of the payor.
- b. Not taxable under the MET, if rural health clinic is separately licensed from the hospital and bills under a separate provider number from the hospital for reimbursement.

**15. Swing Bed Revenue:**

- a. Taxable under the MET or Nursing Facility Quality Assessment Tax. This is an inpatient hospital service provided under the hospital license and reimbursed on a per diem rate. On any service day, hospitals are able to identify whether the bed was used to provide an inpatient hospital service or a nursing facility service. Depending on the service day, the service is either taxed under the MET or the Nursing Facility Quality Assessment Tax.

**16. Senior Center Clinic Revenue:**

- a. Taxable under the MET, if senior center clinic operates as a department of the hospital and bills under the hospital provider number for which cost-based reimbursement would be available under Medicaid, regardless of the payor.
- b. Not taxable under the MET, if the senior center clinic is separately licensed from the hospital and bills under a separate provider number from the hospital for reimbursement.

**17. Wound Care Clinic Revenue:**

- a. Taxable under the MET, if wound care clinic operates as a department of the hospital and bills under the hospital provider number for which cost-based reimbursement would be available under Medicaid, regardless of the payor.
- b. Not taxable under the MET, if wound care clinic is separately licensed from the hospital and bills under a separate provider number from the hospital for reimbursement.

***Individuals who need auxiliary aids for effective communication in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the N.H. Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301 or by contacting them at (603) 230-5000.***