Medicaid Funding by Voluntary Donations

How Louisiana Medicaid uses Voluntary Donations, a variation of provider fees, to fund staff for eligibility expansion in 2016

Compiled by NCSL Health Program, Richard Cauchi, Program Director, February 2016
A supplement to NCSL report at www.ncsl.org/default.aspx?tabid=14359

Louisiana has revived a little-used provision of the 1991 federal law that authorized provider taxes, specific to Medicaid provider voluntary contributions.\(^1\) CMS approved a voluntary donation program for LA Medicaid. The usual terms allow such donations up to $50,000 per donor per year, which allows non-profits, foundations and others to support an innovative or needed feature.

This document has full documentation of the request and approval. It provides a tool and basis for another state to examine or seek such a structure.

Documents
1- Louisiana Medicaid request to CMS director Victoria Wachino on Provider Donation Permissibility - Jan. 19, 2016
2 - Letter from CMS granting approval, Jan. 28, 2016
3 – Louisiana Medicaid announcing approval and use by potential donors, Feb 1, 2016

Note:
January 19, 2016

Ms. Victoria Wachino, Director
Center for Medicare and CHIP Services
7500 Security Blvd
Baltimore MD 21244

RE: Use of Provider-Related Donations to Cover Medicaid Administrative Costs

Dear Ms. Wachino,

Louisiana seeks CMS approval to use provider-related donations to cover the non-federal share of the administrative costs of its Medicaid program as described below.

With Louisiana facing a severe budget shortfall, a number of entities, including hospitals and managed care plans, have indicated their interest in donating funds to the State to be used to cover the non-federal share of Medicaid administrative expenses. These entities would donate funds to the Baton Rouge Area Foundation (BRAF) to be used for the purpose of funding Medicaid administration. At regular intervals, the Foundation would transmit the donations it receives for this purpose to the Louisiana Department of Health and Hospitals (DHH). In this way, DHH would have no knowledge of the entities donating funds or the amount of funds donated by any particular entity.

The State would advise any entity seeking to donate funds – and the Foundation receiving and transmitting the funds to the State – that the State is not to be informed as to the names of the entities making the donations or the amount of any individual donation. There is neither a floor nor a ceiling on the amount of any donation. Donations are entirely voluntary and should be considered a charitable donation and not a business expense. No action or inaction by DHH will depend on whether donations are made. No Medicaid payments to providers will be linked in any way to the donations. The donations will be used solely to cover the State’s share of Medicaid administrative expenses.

We are also asking that CMS consider the funds appropriated and immediately available for administrative match upon direct transfer from BRAF to DHH.
The attachment provides some additional detail.

Thank you again for your help in quickly resolving this matter. Should you need additional information or wish to discuss further, please advise.

Sincerely,

[Signature]

Jen Steele
Interim Medicaid Director

Attachment
LOUISIANA MEDICAID ADMINISTRATION INITIATIVE

- In order to comply with federal regulations, the Louisiana Department of Health and Hospitals’ Medicaid Program will accept donations from the Baton Rouge Area Foundation (BRAF).
- The act of donation will expressly state that the donation is made under the condition that the funds flow directly to DHH for use only as state match for Medicaid administrative expenses.
- The Department will not be provided with the names of any specific contribution sources by BRAF that may have been a part of this donation, nor will DHH be provided with a specified breakout of amounts related to any specific sources.
- DHH will work to ensure that BRAF communicates that any donations for this particular purpose are purely voluntary, without any expectation of any specific DHH initiatives resulting therefrom.
- BRAF will also communicate that there is not a minimum or maximum amount of any donation for this particular purpose.
- Such BRAF donations will be under the full administrative control of DHH and be used for Medicaid administration only.
- Any donations received will be regarded as a charitable donation and shall not be reported a business expense.
JAN 28 2016

Jen Steele
Interim Medicaid Director
Department of Health and Hospitals
628 N. Fourth Street
P.O. Box 91030
Baton Rouge, LA 70821

Dear Ms. Steele:

Thank you for your January 19, 2016, letter asking whether health care entities within the state could provide funding to support the nonfederal share of Medicaid administrative costs. In your letter, you asked for the position of the Centers for Medicare & Medicaid Services (CMS) on whether the state could receive certain provider-related donations. Under applicable federal laws and regulations, donations from providers or provider-related entities of this type are permissible funding sources only if they are “bona fide” which means that they have no direct or indirect relationship to Medicaid payments to the provider or the class of providers through a hold harmless arrangement. Based upon the information you have provided in your letter to CMS, it appears that the provider-related donations at issue would be bona fide.

According to the materials you have provided, Louisiana would receive donations from a third party and you have assured CMS that the state would have no knowledge of which health care entity provided the donations or the amount of any such donations. You have also assured CMS that there would be no conditions attached to the donations and that the state will play no role in suggesting an amount that any provider should donate. Further, the state has assured CMS that any donations would only be used for administrative support and not for provider payments. The state has assured CMS that the expansion of Medicaid eligibility is not conditioned upon the receipt of any donations. You have also assured us that there are no pre-arranged agreements – either between the state and entities making donations or among entities making donations -- linking the donations to Medicaid or other payments to providers. The state has also assured CMS that the donations will not be considered in any rate-setting procedures. Finally, the state has advised us that it understands that any donation should be treated as a charitable donation for purposes of a provider’s financial accounts and not as a cost of doing business or offset against revenues.

If any of the representations identified above are not accurate or if CMS learns of additional information that undercuts the representations you have made, then CMS reserves the right to revisit the question of whether the provider-related donations are bona fide. In addition, CMS will closely review any provider payment increases or supplemental payments to ensure a hold harmless arrangement does not exist. While the state will not know the individual health care entities providing the donated funds, it will know the total dollar amount. That information should be reported to CMS via the form CMS-64.11. CMS will monitor reported amounts and may require further information if such amounts significantly increase from one quarter to another.
Finally, you asked about the timing of when CMS would consider the donated funds appropriated and available for state use. That timing and availability is determined by state for budgetary law and policy and CMS defers to the state on those questions. Thank you again for providing upfront information regarding this proposal.

Sincerely,

Vikki Wachino
Director
February 1, 2016

Mr. John M. Spain, Executive Vice President
Baton Rouge Area Foundation
100 North Street, Suite 900
Baton Rouge, Louisiana 70802

Re: Medicaid Administration Donation

Dear John:

Enclosed please find a letter dated January 28, 2016 from the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), granting its approval for the Louisiana Medicaid Administration to accept donations from health care entities to cover the non-federal share of Medicaid administrative expenses. This approval was granted pursuant to a request from the Louisiana Department of Health and Hospitals (DHH) dated January 19, 2016.

As you will see, CMS approval was predicated on DHH having made certain assurances and we wanted to take this opportunity to make the Baton Rouge Area Foundation (BRAF) aware of the same. First, and of key importance, is that any donation to DHH must come from a 3rd Party and not directly from any health care entity. It is our understanding that BRAF has set up a fund for the particular purpose of making such a 3rd party donation to DHH. Second, the names of any entity donating funds must not be disclosed to DHH. Accordingly, we would request that BRAF refrain from providing DHH with information on donor names or the amounts of any individual donations it receives; all donations must be entirely voluntary. In addition to the above, DHH has assured CMS that any funds received from BRAF will be used solely to cover the State’s share of Medicaid administrative costs and will not be used for the costs of health care services or considered in rate setting. It is also paramount that specific donors are made aware that any donations to the BRAF fund should be treated as a charitable donation and not as a cost of doing business or offset against revenues. The attached letter from CMS lays out the full set of conditions with which the State must adhere in accepting donations and using them to cover Medicaid administrative expenses; it supersedes any earlier information provided by DHH. Finally, the donation from BRAF should expressly state that its donation is conditioned upon the
February 1, 2016
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funds contained therein going directly to DHH, without need for depositing into the Treasury of Louisiana, for use in Medicaid Administration support.

DHH appreciates the willingness of BRAF to set up the fund for this purpose. If you have any questions or comments about this correspondence, please feel free to contact me. Also, please be aware that DHH plans to direct any questions or comments about possible donations to the above mentioned fund to BRAF. With kindest regards, I remain,

Sincerely,

Stephen Russo
Executive Counsel

SR/mm

enclosure