To: Members of the Senate Appropriations Committee, Senate Finance Committee, House Appropriations Committee, House Ways and Means Committee
Cc: Home Care Agencies; Commissioners Monica Hutt, DAIL, Steven Costantino, DVHA; Secretary of the Administration, Justin Johnson
From: Peter Cobb, Executive Director, VNAs of Vermont
Date: November 16, 2015
Subject: Home Health Agency Provider Tax Study (H. 490, Sec. E.306.1)

MEMORANDUM

Attached is the report required in H. 490, Sec. E.306 which states:

Sec. E.306.1 Home Health Agency Assessment Review
(*a)By November 15, 2015, the Visiting Nurse Association of Vermont, in consultation with Bayada Home Health Care, shall study and develop recommendations regarding the home health agency assessment as established in 33 V.S.A 1955a. The study shall include a review of the tax base currently used to calculate the assessment under 33 V.S.A 1955a, recommendation for revisions to the assessment which are equitable to all home health agencies, and a legal analysis of such recommendation to ensure compliance with 42 C.F. R 433.68 Upon request, the Department of Vermont Health Access and of Disabilities, Aging and Independent Living shall provide data or information needed for the analysis. This recommendation shall be reported to the House Committees on Appropriation and on Ways and Means and the Senate Committees on Appropriations and on Finance.*

This report is from the 10 members of the VNAs of Vermont. Bayada Home Health Care (Bayada) was consulted in the development of these recommendations. Because no changes to the current formula are recommended, a legal analysis was not done.

Home Health Agency Provider Tax Study (H. 490, Sec. E.306.1)

Recommendation

The members of the VNAs of Vermont recommend no change to the current tax formula for home care agencies at this time. After considerable discussion, the vote was six agencies for keeping the tax as is, three opposed and one abstaining. Bayada agrees with the majority. All, however, agree that the cost of the Medicaid tax program is a significant burden on the agencies.

In addition, the VNAVT agencies agree that the cap on the amount of tax that any agency pays in a given year should be reduced from 6% to 5% of an agency's annual net patient revenue. This is expected to help two or three agencies. See "Reduce Payment Cap" section below for more information.

Current Tax Assessment

Title 33: Human Services - Chapter 19: Medical Assistance - 1955a. Home health agency assessment

§ 1955a. Home health agency assessment
(a) Beginning July 1, 2005, each home health agency's assessment shall be 19.3 percent of its net operating revenues from core home health care services, excluding revenues for services provided under Title XVIII of the federal Social Security Act.

The current tax is assessed on "Core home health services" of Medicaid, private pay, and private insurance which are defined as "medically-necessary skilled nursing, home health aide, therapeutic, personal care attendant services provided exclusively in the home." Core services do not include private duty nursing, hospice, homemaker or physician services or services provided under EPSDT, TBI, high tech or services provided by a home for the terminally ill. The tax base includes "net operating revenues from core home heath care services, excluding revenues for services provided under XVIII of the federal Social Security Act" (Medicare). (See Appendix 6.)

Purpose of the Tax

The Medicaid tax is a tax on the revenues of nursing homes, home care agencies and hospitals. The purpose of the tax is to leverage federal funds to support the State's Medicaid program, including improvements in provider reimbursements, without added expenses to the State's General Fund. For every dollar paid in taxes the State gets an additional match from the federal government. The taxes paid and federal match are added to the General Fund and can be used to provide higher payments to providers. The tax cannot, however, be directly linked to provider reimbursements so there is no guarantee that providers get all the money back earned by the State from the tax and the Federal match.

Original Intent - Background of the Home Care Tax

Vermont implemented provider taxes in 1991 for hospitals, nursing homes and home health agencies. Hospitals and nursing homes have been taxed every year since then. The home care tax was suspended in 1993 when the original law sunset. The money earned by the State from the home care tax and was less than $1 million and not of significant value either to home health or to the State. The home care tax was resumed in 2000 when the agencies faced a serious financial crisis caused, in part, by payment changes from Medicare.

In 1998, Medicare changed home care payments from fee-for-service to an "Interim Payment System" (IPS) which was based on past spending rather than on the actual services provided. IPS cost Vermont agencies $9 million in lost revenues from 1998 to 1999 as Medicare revenues dropped from $40,755,706 in 1998 to $31,710,274 in 1999, a $9,045,432, 22% decline. This extreme revenue loss placed all agencies in serious financial straits and forced several to the brink of financial collapse.

To survive this financial crisis, the home care agencies asked the State to significantly raise the Medicaid rates paid as the agencies could no longer afford to subsidize Medicaid losses with Medicare surpluses. Rather than approve an across-the-board rate increase, State officials told home care that payment rates could be increased significantly only if the home care agencies "grew their own food" - basically raised the extra money needed to pay higher rates by reinstating the Medicaid tax through which some of the federal money earned by the State from the federal match and the taxes paid would be paid back to the home care agencies.

A second incentive was also discussed: The agencies could use the higher payments resulting from the federal match on the taxes paid, to pay higher wages and to add benefits to the direct care workers – homemakers, home health aides, respite workers.

Reinstating the Medicaid taxes was never the preferred option for the home care agencies. The agencies reluctantly agreed because there was no other option in 2000 that would have resulted in higher rates and financial relief. With the benefit of hindsight, all now agree that the tax should not have been reinstated because the tax is seriously flawed; the cost far outweighs the benefit, as rate increases have not matched either inflation or the increased tax burden.

Current Formula

The formula approved in 2000 was designed so that agencies which benefited most from the tax - through higher Medicaid payments - would pay more in taxes compared to their net revenues than agencies with smaller Medicaid programs. Agencies which paid more in taxes got more money from Medicaid. For the first four years this formula made sense as rate increases kept pace with rising costs. Starting 2005, Medicaid payment increases (see Appendix 1) to the agencies did not match inflation (see Appendix 2) and have been nearly stagnant since then. Agencies are paying more but getting little or no extra benefit. When inflation and the taxes paid are included in the net operating revenues, the payments per visit today are less than they were in 2000.

Immediate Impact

The new tax began in 2000 and had an immediate, positive impact. Rates paid for nursing, for example, were raised from $75/visit to $95, a 27% increase. The increases not only helped some of the agencies avoid bankruptcy but also were used to increase the wages and benefits for the direct care workers.

The benefit of the tax to the agencies, however, ended four years later when the state was unable to increase Medicaid payments to match either inflation or the increase in tax payments. In an attempt to continue the benefit of the tax to the agencies, the tax rate was increased several times (from 7.9% in 2000 to the current 19.3% of the tax base – see Appendix 3) but despite increased tax payments by the agencies, the rates paid did not keep pace with consumer price index. The agencies paid higher taxes but did not get higher rates that matched the higher tax. The gap between cost and payment has grown every year since then. The VNAVT member agencies reported over $ 7 million is losses in 2014 for services to Medicaid patients.

VNAVT Medicaid Revenues State FY 2013	Cost for Service	Difference	Percent Loss/Gain
$28,036,755	$35,455,341	-$7,418,586	-26.5%

Background of Study

The disparity of payments among the agencies, as a percentage of the total paid by the eleven Medicare-certified agencies, was first revealed by the financial reports released by the Department of Disabilities, Aging and Independent Living and later by the Joint Fiscal Office during a legislative discussion concerning home care tax payments. This disparity, plus the fact that currently there is little financial benefit to the tax and the fact that the tax burden and low Medicaid payments have placed several agencies in financial jeopardy, prompted the members of VNAVT to ask the Legislature to mandate a study to determine if the current tax base is a fair way to assess the home care tax and to recommend an alternative, should the industry determine that a different tax formula should be used.

Tax Study

The members of the VNAs of Vermont studied several tax options including taxing all revenues and taxing several subset options. The various options considered were presented to and discussed with Bayada Home Care. The group agreed on several principals that must be applied to whichever formula was selected:

- The tax based approved must be budget neutral both for the state and the agencies as a whole.
- The decision must be based on a fair assessment formula.

After several months of discussions the VNAVT membership did not agree on a recommended change.

No Change

Those who support changing the formula to have the taxes based on total operating revenues argued this method is most fair, since the percentage of the taxes paid compared to total revenues would be the same (similar to how hospitals are taxed) for all agencies. Six agencies of 10 VNAVT members, however, felt the current formula is the best of the several options discussed and that the problem is poor payments from Medicaid rather than a problem with the formula. Bayada also opposed changing the current formula. All agree that Medicaid needs to ensure adequate reimbursement that reflects the needs of patients and providers.

Eliminate Tax/Reduce Payment Cap

The original intent of the home care tax - to provide financial relief to the agencies - is no longer valid. Rather than a financial benefit, the tax is now simply a significant financial drain on the agencies (see Appendix 4). For many it is the third largest expense with only salaries and travel costs greater. Not only is paying the tax a huge burden but also the tax substantially raises the cost to do business for all services, not just Medicaid. The high tax and low payments have placed several agencies in serious financial jeopardy and the ability to provide full services to all Medicaid programs is not assured. Unless changes are made, some agencies may be forced to limit home care services for some Medicaid programs.

The preference of all 10 VNAVT members is to phase out the Medicaid tax over a five-year period. VNAVT members believe there is little benefit from the tax to the agencies. If that is not a realistic option, since the State is dependent upon the taxes, VNAVT members recommend that the cap on the amount of tax an agency can pay in any given year be reduced from 6% to 5% of an agency's annual net patient revenue. See 33 V.S.A. §1955a(a). The projected cost to the State to do this would be $148,764 in state funds for a total of $312,000 including the federal match (see Appendix 5). This would help assure the financial viability of the two or three agencies whose tax payments are so burdensome that they jeopardize their ability to survive financially.

Should you have any questions, please contact me at 802-229-0579 or vnavt@comcast.net.

Peter Cobb, VNAVT Director

vnas of Vermont
Your Nonprofit
Home Health & Hospice Agencies

Medicaid Rates

Description	Effective Date										
	7/1/2000	**7/1/2001**	**7/1/2003**	**7/1/2005**	**7/1/2007**	**7/1/2008**	**7/1/2009 & 7/1/2010***	**7/1/2011**	**7/1/2012**	**11/1/2013**	**7/1/2015**
PT	$ 75.00	$ 95.00	$ 102.14	$ 98.96	$ 109.45	$ 112.41	$ 110.16	111.72	$ 116.19	$ 118.56	$ 118.56
OT	$ 75.00	$ 95.00	$ 102.82	$ 99.62	$ 110.19	$ 113.17	$ 110.91	112.43	$ 116.95	$ 119.34	$ 119.34
ST	$ 75.00	$ 95.00	$ 110.98	$ 107.54	$ 118.94	$ 122.15	$ 119.71	121.27	$ 126.13	$ 128.70	$ 128.70
Nursing	$ 75.00	$ 95.00	$ 95.00	$ 92.06	$ 100.11	$ 102.81	$ 100.75	102.16	$ 106.25	$ 108.42	$ 108.42
MSW	not covered	$ 95.00	$ 149.74	$ 145.10	$ 160.46	$ 164.79	$ 161.49	163.66	$ 170.21	$ 173.68	$ 173.68
Home Care Aide	$ 28.00	$ 40.52	$ 42.28	$ 40.92	$ 45.32	$ 46.55	$ 45.62	46.24	$ 48.12	$ 49.08	$ 49.08
Case Management				$ 16.25	$ 16.86	$ 16.86	$ 16.52	16.52	$ 16.52	$ 69.28	$ 69.42
Personal Care - HHA	$ 13.50	$ 22.80	$ 24.60	$ 25.00	$ 25.96	$ 26.68	$ 26.15	26.34	$ 26.88	$ 27.64	$ 27.70
Respite Care - HHA				$ 20.00	$ 20.76	$ 21.32	$ 20.89	21.05	$ 21.48	$ 22.07	$ 22.12
Homemaker Service				$ 18.00	$ 18.68	$ 19.20	$ 18.82	18.93	$ 19.32	$ 19.84	$ 19.84

Consumer Price Index (From the US Department of Labor)

		Actual Rates Paid		Medicaid Payments If Inflation had been added	CPI Rates (from federal website)
1999	$	75.00	$	75.00	Base Rate
2000	$	75.00	$	77.55	3.40%
2001	$	95.00	$	78.79	1.60%
2002	$	95.00	$	80.68	2.40%
2003	$	95.00	$	82.21	1.90%
2004	$	95.00	$	84.93	3.30%
2005	$	92.06	$	87.82	3.40%
2006	$	92.06	$	90.63	3.20%
2007	$	100.11	$	109.66	2.10%
2008	$	102.81	$	114.26	4.20%
2009	$	100.75	$	114.26	even
2010	$	100.75	$	117.35	2.7%
2011	$	102.16	$	119.22	1.60%
2012	$	106.25	$	122.68	2.90%
2013	$	108.42	$	124.64	1.60%
2014	$	108.42	$	128.26	2.90%
2015					

Vermont Health Care Provider Tax Assessment - Home Health
SFY 2001 -SFY2016

SFY	Tax Rate
2001	7.34%
2002	12.90%
2003	12.90%
2004	16.00%
2005	16.00%
2006	18.45%
2007	18.45%
2008	18.45%
2009	18.45%
2010	17.69%
2011	17.69%
2012	19.30%
2013	19.30%
2014	19.30%
2015	19.30%
2016	19.30%

Tax assessment on "Core Services"

Department of Vermont Health Access
Provider Tax Assessment for SFY 2016 Home Health Agencies

Section 25 33 VSA 1955 (a) Tax Rate Effective 19.30% effective 10/1/2011

							Tax Rates 10/1/2011						
Column #		**(1)**	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(6.a)**	**(6.ab)**	**(7)**	**(8)**	**(9)**	**(10)**
Tax Rate			**Core Net Patient Service Revenue**				**19.30%**						
Calculation			None	None	(2) - (3)	None	(5) x 19.30 % = (6)			None	(7) x 6%= (8)	(6) - (8)= (9)	
Provider Number	**Full Name**	**Audited Fiscal Year Base for SFY 2016**	**Base SFY 2015 Prior Assessment**	**Prior Year on Current Audited Financial Statement**	**Change in Base for prior year restatement in Current Audited Financial Statement**	**Basis SFY 2016 Current Audited Financial Statement Available**	**SFY 2015 Annual Tax Assessment**	**Prior Period Adjustments**	**SFY 2016 Annual Tas Assessment with Prior Period Adjustment**	**Net Patient Revenue from Audited Financial Statement**	**CAP Limit 6% of Net Patient Revenue**	**Variance Annual Tax Assessment vs CAP 6% of Net Patient Revenue**	**Total Tax Assessment for SFY 2016 ****
0477014	Addison County Home Health & Hospice	06/30/14	$ 2,553,295	$ 2,553,295	$0	$ 2,885,299	556,862.71	$ -	556,862.71	$ 10,176,735	610,604.10	(53,741.39)	556,862.71
0477017	VNA and Hospice of Southwestern Vermont Health Care**	09/30/14	$ 785,158	$ 785,158	$0	$ 690,916	133,346.86	$ -	133,346.86	$ 3,498,823	209,929.40	(76,582.55)	133,346.86
0477010	Caledonia Home Health Care & Hospice (NCHC)	03/31/14	$ 1,182,470	$ 1,182,470	$0	$ 1,277,905	246,635.67	$ -	246,635.67	$ 5,339,006	320,340.36	(73,704.70)	246,635.67
0477003	Central Vermont Home Health & Hospice	12/31/14	$ 1,909,226	$ 1,734,861	($174,365)	$ 2,134,407	411,940.55	(33,652.45)	378,288.11	$ 10,576,103	634,566.18	(222,625.63)	378,288.11
0477016	Franklin County Home Health Agency	06/30/14	$ 2,589,478	$ 2,589,478	$0	$ 2,613,103	504,328.88	$ -	504,328.88	$ 7,478,286	448,697.16	55,631.72	448,697.16
0477015	Lamoille Home Health & Hospice	06/30/14	$ 889,349	$ 889,349	$0	$ 777,346	150,027.78	$ -	150,027.78	$ 3,516,866	211,011.96	(60,984.18)	150,027.78
0477009	Manchester Health Services	12/31/14	$ 485,943	$ 485,943	$0	$ 376,642	72,691.91	$ -	376,642.00	$ 1,523,460	91,407.60	(18,715.69)	72,691.91
0477018	Orleans, Essex VNA & Hospice	06/30/14	$ 774,400	$ 774,400	$0	$ 984,589	190,025.68	$ -	190,025.68	$ 3,967,906	238,074.36	(48,048.68)	190,025.68
1011977	Bayada Nursing Services-Professional Nursing Services	12/31/14	$ 563,990	$ 563,990	$0	$ 705,611	136,182.92	$ -	136,182.92	$ 20,746,452	1,244,787.10	(1,108,604.18)	136,182.92
0477007	Rutland Area Visiting Nurse Association & Hospice	12/31/14	$ 2,386,329	$ 2,386,329	$0	$ 2,691,434	519,446.76	$ -	519,446.76	$ 12,075,629	724,537.74	(205,090.98)	519,446.76
0477001	Visiting Nurse Association and Hospice of Vermont and New Hampshire	12/31/14	$ 2,522,323	$ 2,522,323	$0	$ 2,592,391	500,331.46	$ -	500,331.46	$ 19,661,848	1,179,710.88	(679,379.42)	500,331.46
0477000	Visiting Nurse Association of Chittenden and Grand Isle Counties	06/30/14	$ 6,152,938	$ 6,152,938	$0	$ 5,986,596	1,155,413.03	$ -	1,155,413.03	$ 26,702,448	1,602,146.88	(446,733.85)	1,155,413.03
	Total		$ 22,794,899	$ 22,620,534	$ (174,365)	$ 23,716,239	4,577,234.20	(33,652.45)	4,847,531.85	125,263,562	7,515,813.72	(2,938,579.53)	4,487,950.03

Purchased by Rutland Area Visiting Nurse Associateion & Hopsice on 10/1/2014

Taxes based on 5% max.

Medicaid Tax with 5% payment cap

	Medicaid Tax Current Actual FY 2016	Total Revenues DAIL FY 2014 Report	Maximum Assessment 5%	2014 Tax or 5% maximum whichever is lower	Difference		
Addison	$ 556,863	$ 10,289,186	$ 514,459	$ 514,459	$ (42,404)		
Caledonia	$ 246,636	$ 6,222,831	$ 311,142	$ 246,636	-		
CVHHH	$ 411,940	$ 11,031,800	$ 551,590	$ 411,940			
Franklin	$ 504,329	$ 7,959,382	$ 397,969	$ 397,969	$ (106,360)		
Lamoille	$ 150,028	$ 3,633,661	$ 181,683	$ 150,028			
Manchester	$ 72,691	$ 1,641,074	$ 82,054	$ 72,691			
Orleans	$ 190,026	$ 4,008,719	$ 200,436	$ 190,026		Loss to State	
Rutland	$ 652,794	$ 16,256,687	$ 812,834	$ 652,794		$ 148,764.00	taxes
VNA	$ 1,155,413	$ 28,005,302	$ 1,400,265	$ 1,155,413		$ 163,640.40	fed match
VNH	$ 500,331	$ 19,713,810	$ 985,691	$ 500,331			
Bayada	$ 136,182	$ 18,786,195	$ 939,310	$ 136,182		$ 312,404.40	Total
Totals	$ 4,577,233	$ 127,548,647		$ 4,428,469	$ (148,764)		

Vermont Legislative Joint Fiscal Office

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Date: 4/2/13
Prepared by: Nolan Langweil

Home Health Provider Tax:
Background Information

- Estimated SFY'13 revenue (BAA) = ***$4,529,917***

- 12 Home Health Agencies in Vermont, all of which serve Medicaid beneficiaries.

- Assessed 19.3% of net operating revenues from core home health care services.

    - Core home health services mean those medically necessary skilled nursing, home health aide, therapeutic and personal care attendant services, provided exclusively in the home by the home health agency.

    - Core home health services do not include private duty nursing, hospice, homemaker or physician services, or services provided under early periodic screening, diagnosis, and treatment (EPSDT), traumatic brain injury (TBI), high technology programs or services provided for the terminally ill.

    - The calculation also excludes revenues for services provided under Title XVIII of the Social Security Act (i.e. Medicare).

    - ***This is equivalent to 3.9% of net patient revenues for all home health agencies as a whole.***
        - 6% of net patient revenues are used by the federal government in determining the "safe harbor" threshold.
        - Other provider classes such as hospitals, nursing homes, and ICF/MRs[1] are assessed between 5.9% to 6% of net patient revenue or equivalent.

- The assessment is based on an agency's most recent audited financial statements at the time of submission, which are provided to DVHA on or before December 1 of each year.
    - *H.528 moves the submission date to May 1 (recommended by DVHA).*

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[1] Intermediate Care Facilities for Persons with Mental Retardation