May 22, 2018

Tim Hill
Acting Director
Centers for Medicaid and CHIP Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Acting Director Hill:

On behalf of the nation's Medicaid Directors, we are pleased to offer comments on the Centers for Medicare and Medicaid Services (CMS) Notice of Proposed Rulemaking (NPRM), **"Medicaid Program; Methods for Assuring Access to Covered Medicaid Services-Exemptions for States With High Managed Care Penetration Rates and Rate Reduction Threshold [CMS-2406-P]."**

The National Association of Medicaid Directors (NAMD) is a bipartisan, nonprofit, professional organization representing leaders of state Medicaid agencies across the country. Our members drive major innovations in health care while overseeing Medicaid, which provides a vital health care safety net for more than 72 million Americans. Medicaid Directors and the teams they lead are at the forefront of delivery system and payment reforms, driving health system transformation via alternative payment models and shifting their programs to be sophisticated purchasers of healthcare value with the aim of improving beneficiary outcomes and ensuring the long-term sustainability of the program.

Medicaid Directors are broadly supportive of the flexibilities proposed under this NPRM, and appreciate CMS's acknowledgement of the need to reduce administrative burden for states while continuing to ensure Medicaid beneficiaries have appropriate access to care. Further, acknowledging the role of managed care as the predominant delivery system in Medicaid and accounting for this fact going forward is a welcome modification. Specific comments on the NPRM's provisions are below.

Nominal Payment Changes

We support CMS's proposal to codify in regulation rate reductions which would be considered "nominal" and not trigger the full suite of access monitoring requirements. Many states in the course of complying with the access monitoring rule have found that small, routine rate reductions made throughout a given year, such as to account for inflation or other trend factors, do not have any impact on access to services. Yet under the rule's current regulatory structure (prior to CMS's shift in enforcement articulated in November 2017 guidance), these minor rate modifications still required the full development of an access monitoring plan, projections of predicted impact on access, and state monitoring of access resulting from the change. This work is administratively burdensome for states and generates little information of value for either states or CMS.

The NPRM proposes setting the nominal payment threshold at a four percent reduction over one fiscal year or a six percent reduction over two fiscal years. These thresholds would not be linked to a specific SPA submission. While we recognize that CMS offers the two-year option as a means of allowing states flexibility to administer rates during that period, the expectation that states must track cumulative rate changes over the two-year period may pose administrative complexities.

We seek clarification that, if CMS moves forward with this approach, the reduction threshold options are applied in a flexible manner such that an access monitoring review plan is not required for a state seeking a rate reduction between four and six percent over a two fiscal year window.

Additionally, we recommend CMS consider using the thresholds of a five percent rate reduction over one state fiscal year or an eight percent reduction over two state fiscal years, with the same clarification rate reductions of up to eight percent within the overall two-year window do not trigger the full access monitoring review. State experiences with implementing rate reductions of this size suggest that access is not impacted.

Exemptions for States with High Rates of Managed Care Enrollment

We support CMS's proposal to allow states meeting certain managed care enrollment thresholds to be exempt from the access monitoring rule's requirements. As we articulated in previous comments on this regulation, there are several states which operate extremely small and/or time-limited FFS programs. For instance, a state may only use FFS to provide limited retroactive coverage while an individual is completing the managed care enrollment process. In these instances, we strongly believe that applying the full access monitoring rule is not an effective use of scarce state resources.

The NPRM proposes a managed care enrollment threshold exemption of 85 percent, with the state attesting to CMS at the beginning of each calendar year that the state had this level of enrollment as of July 1 of the previous calendar year. We recognize that CMS proposed 85 percent as a compromise between stakeholder requests for setting a threshold ranging from 75 to 95 percent managed care enrollment. However, we believe that the 85 percent threshold would continue to pose burdens on states with a high degree of managed care enrollment. As such, consistent with our previous comments on this issue, we recommend CMS consider a 75 percent threshold for the managed care enrollment exemption from the access monitoring rule's requirements.

Additionally, we recommend CMS consider additional specificity in how it intends to confirm state attestation of meeting the managed care enrollment threshold. This could be done via subregulatory guidance describing the process and timeline for CMS verification of the state's attestation. It is important for states to have confidence that their attestations will be verified and accepted by CMS in a timely manner in order to avoid situations where a state may be expected to comply with the access rule due to discrepancies or methodological issues with its attestation.

Separate from the proposed absolute managed care enrollment threshold of 85 percent, CMS also sought comment on a a stratified enrollment threshold option. Under this approach, states would be exempt if they met an overall lower managed care enrollment level (such as 70 percent), combined with a minimum level of managed care enrollment in each eligibility category (such as 50 percent). We do not support this approach, as it may pose challenges for states which carve out specific populations, services, and/or geographic regions from managed care.

We wish to emphasize that regardless of what threshold exemption CMS sets, states are both committed and obligated to ensuring access to high-quality services for their Medicaid beneficiaries.

Attestation of Sufficient Access

We support CMS's proposal that, instead of requiring states to include an analysis of the projected impact of a given rate change in their SPA submissions, states can attest that current rate structures prior to the requested change allow for sufficient access to the service in question. States must also submit baseline data documenting this sufficient access.

We believe this change will reduce the burden posed by producing access projections, which are inherently uncertain and generally of limited utility in understanding the anticipated effects of a given rate change.

Alternative Analysis and Documentation to Support Compliance with 1902(a)(30)(A)

CMS seeks stakeholder perspectives on what alternative data and analysis states can provide to demonstrate their compliance with statutory requirements for sufficient access to services when proposing reduced or restructured rates that may impact access. While we do not have specific recommendations for what this analysis and data should entail, we recommend CMS adopt a flexible approach that will support a variety of state methodological approaches. We do not believe a defined list of acceptable data sources or types of analyses will capture the variation of state program design, goals of a given rate change, local provider capacities, and overall health care markets. To encompass all of these considerations, CMS should provide states with the flexibility to design tailored analysis and provision of data that will be most accurate and reflective of a given SPA submission. Any examples CMS provides of what this analysis may entail should be a guide, rather than a rigid model.

Thank you for the opportunity to provide Medicaid Directors' perspectives on these important issues. We appreciate your consideration of these comments, and are happy to work with CMS going forward to continue ensuring appropriate access to Medicaid services.

Sincerely,

Judy Mohr Peterson
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