January 4, 2021

Seema Verma
Administrator
The Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Verma,

On behalf of the nation's Medicaid Directors, NAMD is writing to offer comments on the proposed rule "Reducing Provider and Patient Burden by Improving Prior Authorization Processes, and Promoting Patients' Electronic Access to Health Information" [CMS-9123-P]. Our comments focus primarily on implementation challenges anticipated under this proposal, given the challenges states are already facing with current CMS interoperability requirements and timelines.

We wish to note from the outset that the comment period for a rule of this magnitude is inappropriately brief – under 30 days and falling across holidays – which inhibits the ability for states to respond in as much detail as this proposal requires. Further, state resources remain dedicated to the ongoing COVID-19 response, reducing state capacity for feedback. We strongly recommend that CMS reopen this comment period at a future date or explore another mechanism for soliciting stakeholder input that allows for a more fulsome engagement with these proposals. Our high-level views on this proposed rule are articulated below.

CMS's previous rulemaking on interoperability requires states and contracted Medicaid managed care plans to implement open Application Programming Interfaces (APIs) to facilitate sharing claims and encounter data and provider directory data with third-party applications. States are also required to develop processes for identifying third-party applications that pose a risk to state health information systems. When CMS finalized these requirements, it initially set an implementation date of January 1, 2021. CMS is employing discretionary enforcement to extend this date to July 1, 2021 to reflect the ongoing COVID-19 pandemic.

As stated in our comments on this rule in its proposed form, the scope of implementation activities states must undertake to meet these existing requirements is significant. Even prior to the onset of the pandemic, NAMD had concerns about the feasibility of CMS's aggressive implementation dates. These concerns were amplified when COVID-19 became the top priority in the states, and we requested on two separate occasions (May 2020 and October 2020) for CMS to provide additional compliance time for the current interoperability requirements, recognizing that many states are facing steep declines in general revenues and are not able to incur the costs associated with implementing the rule. Further, states' budget and procurement cycles do not align with the timelines envisioned by CMS.

Unfortunately, instead of providing additional relief, CMS is proposing additional requirements for states without pausing to assess how its current requirements will function once implemented. Specifically, CMS proposes extending to fee-for-service programs the payer-to-payer data exchange requirements

currently applicable to managed care plans, requires new API functionality to share information on active and pending prior authorization (PA) requests, and requires an attestation process regarding the privacy of data from third-party developers requesting data from the patient access API. CMS sets an implementation date of January 1, 2023 for these requirements, with an option for a one-year extension and an annual exemption for states with over ninety percent of Medicaid services or enrollees in managed care.

We do not view a layering of additional expectations and requirements on states as appropriate given the challenges states are already facing in meeting existing interoperability requirements. State information technology work is already stretched to meet CMS mandates such as the current interoperability rule, modular Medicaid Management Information Systems (MMIS), electronic visit verification, and improving the quality of Transformed Medicaid Statistical Information System (T-MSIS) submissions. In addition, states are implementing and maintaining COVID-19-related flexibilities and eligibility requirements and advancing other state-level priorities. Introducing new requirements into an already crowded information technology portfolio, which may impact existing state strategies and procurements, will create even more challenges for state resources and capacity. It is unclear whether the one-year extension process and timelines envisioned in this rule will be sufficient to account for these challenges.

Further, we believe it is premature for CMS to continue creating new interoperability requirements prior to assessing how its current requirements will function in practice. It will likely take several years for API developers to leverage the APIs states and managed care plans are implementing now. Real-world experience from these APIs, once they are implemented, should be evaluated and lessons learned applied to future policymaking. This proposed rule does not currently allow for those lessons to be learned.

We also have reservations about the readiness of all parties involved in these API data transactions to ensure the security of information shared. CMS requires states to conduct a risk assessment process for third-party applications as part of the current interoperability rule and envisions a new attestation process in this proposed rule. It is unclear how states will effectively track this attestation, and there may be significant program integrity risks if this process is rushed in its development. For this reason, we continue to believe a pause on new interoperability requirements is appropriate.

Our comments here are brief, and we recognize the need for ongoing dialogue on these issues. As such, we reiterate our request that CMS employ additional mechanisms for gathering stakeholder input on these important and far-reaching proposals. This rule should not be finalized until such opportunities are offered and allow for a more nuanced discussion of these issues.

Sincerely,

NAMD Executive Director