



May 26, 2020

Seema Verma
Administrator
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 request state relief from several pending regulatory timelines in light of the COVID-19 pandemic. Medicaid agencies are critical components of state responses to the pandemic, and agency staff are rightly prioritizing COVID-19 over more routine work, including preparing for compliance with new federal regulatory requirements. We ask for targeted flexibilities from CMS to account for this situation and for these flexibilities to be clearly communicated throughout CMS's Regional Offices to ensure uniformity of understanding across staff.

NAMD recognizes that some areas where states are requesting relief will require statutory change by Congress. The most notable of these is pending FMAP penalties for states not yet instituting Electronic Visit Verification in their Medicaid personal care services. NAMD has requested Congress to extend the timeline for compliance for this activity by one year.

We are specifically seeking delays or flexibilities in the following regulatory areas:

- **HCBS Settings Rule:** The home- and community-based settings rule requires states to conduct site assessments and other activities in order to implement statewide transition plans by March 2022. Many of these activities cannot be safely conducted during the pandemic, as these settings serve high-risk COVID-19 populations. We request a delay of this rule's transition period of at least one year, to March 2023, to account for compliance work not being conducted during the pandemic.
- **Interoperability Rules:** Earlier this year, CMS and the Office of the National Coordinator finalized their complementary rules to promote interoperability in health information technology platforms. While NAMD supports the objectives of these rules, we are concerned that their timelines will be challenging to meet, even with CMS utilizing its discretionary enforcement authority to extend state timelines by six months to July 2021. We request CMS further extend the discretionary enforcement period to at least January 2022.
- **1115 Waiver Renewals:** Some states with large and complex 1115 demonstration waivers are entering into the time period where waiver renewal negotiations must start. Planning for the next iteration of these waivers and negotiating with CMS is a complex and resource-intensive task for both parties. In recognition that bandwidth is limited and focused on COVID, we request that CMS extend by a minimum of 12 months the lifetime of any state's 1115 waiver expiring within the next 18 months. Further, CMS should be flexible on the timing of waiver renewals as

states develop waiver constructs for a post-COVID health care landscape, which may require unique considerations or alternative timeframes for state and federal activities.

- **PERM and MEQC Audits:** We appreciate that CMS has paused Payment Error Rate Measure (PERM) and Medicaid Eligibility Quality Control (MEQC) audit activities in the immediate term in recognition of the burden COVID has placed on states. We ask that CMS extend this pause for the duration of the emergency and for at least six months after its conclusion.
- **Demonstration Grants and Opportunities:** Many states are participating in demonstration models through the Center for Medicare and Medicaid Innovation or other opportunities, including SUPPORT Act substance use disorder treatment provider development grants, the Integrated Care for Kids model, and the Maternal Opioid Misuse model. These models have associated reporting timelines or other milestones that were developed before the onset of the pandemic. We request that CMS review applicable models and make appropriate extensions to their milestones to account for the pandemic's impact on state resources.
- **The Medicaid Fiscal Accountability Regulation:** This rule would dramatically impact the financing mechanisms states use to support their Medicaid programs and would create significant new reporting requirements. These changes should not be instituted during an economic recovery when the Medicaid program's resource needs will be increased. We request a delay of at least two years on CMS's work in finalizing this rule.

The specific regulations and processes mentioned above are not exhaustive of areas where states will need flexibilities on timelines and related activities. As states continue to identify additional areas for regulatory relief, we encourage CMS to extend similarly appropriate flexibilities and timelines.

Sincerely,



Beth Kidder
President, NAMD
Deputy Secretary for Medicaid
Florida Agency for Health Care Administration



Jami Snyder
President-Elect, NAMD
Director
Arizona Health Care Cost Containment System