NAMD
National Association of Medicaid Directors

January 8, 2024

Chiquita Brooks-LaSure
Administrator
The Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Brooks-LaSure,

On behalf of the nation's Medicaid Directors, NAMD is pleased to offer comments on the proposed rule, Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2025; Updating Section 1332 Waiver Public Notice Procedures; Medicaid; Consumer Operated and Oriented Plan (CO-OP) Program; and Basic Health Program [CMS-9895-P].

The proposed rule includes two provisions that would impact the Medicaid program. First, the rule proposes to allow Medicaid agencies to target income and resource disregards to specific populations within non-MAGI eligibility groups. NAMD strongly supports this proposed change, which would allow Medicaid agencies to better tailor care. Second, CMS proposes to transition the Verify Current Income (VCI) service on the Federal Data Services Hub ("the Hub") to a Medicaid-claimable service, beginning on July 1, 2024. This change would have significant fiscal impacts on Medicaid agencies and may act as a barrier to the Administration's goals around streamlining Medicaid eligibility processes.

NAMD is a professional community of state and territory leaders who provide health insurance to almost 90 million individuals and families through Medicaid and the Children's Health Insurance Program in each of the 50 states, the District of Columbia, and the U.S. Territories. NAMD elevates thought leadership on core and emerging policy matters, amplifies the experience and expertise of Medicaid and CHIP directors, supports state programs in continuous improvement and innovation, and optimizes federal-state partnerships to help millions live their healthiest lives.

NAMD Supports the Proposed Change to Allow Tailoring of Income and Resource Disregards for non-MAGI Populations

In this rule, CMS proposes new flexibilities to allow Medicaid agencies to target income and resource disregards to specific populations within non-MAGI eligibility groups. **NAMD strongly supports this proposed change.**

Under the current regulatory framework, Medicaid agencies are allowed to apply "less restrictive" methodologies when determining financial eligibility for the non-MAGI eligibility pathways. In practice, this means that Medicaid agencies can elect to disregard certain income or resources when determining financial eligibility for non-

MAGI eligibility groups, allowing individuals at higher incomes to qualify for coverage. However, per the existing comparability mandate, if a Medicaid agency elects to apply an income or asset disregard, it must do so for all individuals in the given eligibility group. In this rule, CMS proposes to eliminate the comparability mandate, which would allow Medicaid agencies to target income and asset disregards to specific populations within eligibility groups.

NAMD strongly supports this proposed change. Medicaid agencies do not always have the fiscal resources to apply income and asset disregards to entire eligibility groups, which are broad and serve individuals with a variety of needs. The proposed change would allow Medicaid agencies to target disregards to achieve program goals, such as improving clinical outcomes for older adults with cognitive impairments or smoothing transitions from nursing facilities to home and community-based services. This change would also allow Medicaid agencies to address nonsensical, unintended situations that have resulted from different eligibility groups having different income and resource limits; CMS cites the example of Medicaid members being required to spend down their resources when they stop working and must apply for a different eligibility group. The proposed flexibilities are a commonsense change that would allow Medicaid agencies to improve care for non-MAGI members.

Proposed Changes to Verify Current Income Function would have Negative Impacts on Medicaid Agencies

In this rule, CMS proposes to reinterpret Medicaid and CHIP agency use of the Federal Data Services Hub Verify Current Income (VCI) service as a Medicaid and CHIP agency function. This would shift the cost of this service from the federal government to states and territories. **Medicaid Directors report that this change would have fiscal impacts on Medicaid agencies and may act as a barrier to ongoing state/territory efforts to streamline eligibility processes**.

Income data plays an important role in the Medicaid redetermination process. Per the Affordable Care Act, Medicaid agencies are required to attempt to renew an individual's eligibility based on available data before sending a renewal form. This is often referred to as an *ex parte* renewal.

The national Medicaid redetermination process has highlighted the importance of *ex parte* renewals in ensuring that eligible individuals retain coverage. *Ex parte* renewals allow a Medicaid agency to renew a member's coverage without that member needing to return a renewal form or take other action, which reduces the risk that the member will lose their Medicaid coverage for procedural reasons. Notably, in the August 2023 renewal cohort, 61.5% of individuals who had their Medicaid coverage successfully renewed were renewed via *ex parte*.

Throughout the unwinding process, Medicaid agencies and federal partners have taken action to increase *ex parte* rates. As of December 2023, Medicaid agencies have

implemented a total of 201 1902(e)(14)(a) waiver strategies aimed at increasing *ex parte* rates, including strategies that allow states to renew coverage based off of income data from SNAP and TANF. The Biden Administration has explicitly encouraged states and territories to increase their *ex parte* rates; in his June 2023 letter to U.S. Governors, HHS Secretary Xavier Becerra urged states to "maximize the use of data sources… [to] help reduce the need for some individuals to fill out and return a Medicaid renewal form." As detailed in CMS's October 2022 deck on *ex parte* renewals, leveraging additional data sources can be an important step in improving *ex parte* rates.

CMS's proposal to shift the cost of the Hub's VCI service to Medicaid agencies would impede these ongoing state and federal efforts. The proposed change would have significant fiscal impacts on Medicaid agencies, which may require Medicaid agencies to stop or decrease their use of the VCI service. The timing of the shift is particularly challenging, as most states and territories are already far along in their budget processes; in many states, the Governor must submit their final budget to the state legislature in January 2024. This dynamic is especially difficult in states with biennial budgets.

To mitigate these potential impacts, Congress should appropriately fund CMS and the Federal Data Services Hub to ensure that Medicaid agencies can access important sources of income data. NAMD also urges the vendor community to act in good faith to support the Medicaid program. Finally, CMS should explore pathways to make 1902(e)(14)(a) waiver strategies permanently available; this would help ensure that Medicaid agencies can retain improvements in *ex parte* rates after the unwinding ends in 2024.

CMS seeks comment on how to bill Medicaid for their use of the VCI service starting July 1, 2024. In the rule, CMS proposes to charge Medicaid agencies for their anticipated annual usage and then reconcile costs annually based on actual usage. CMS also discusses an alternative approach, under which Medicaid agencies would be billed monthly for their actual usage. Medicaid Directors report diverging preferences: some states would prefer to pay upfront for projected costs while others would prefer to be billed for their actual utilization. One state reports that it would be operationally simplest to pay for their projected utilization quarterly and have costs reconciled with their actual usage at this same quarterly date, as is current practice for Third Party Liability payments. **Given this diversity of feedback, NAMD encourages CMS to give states and territories multiple options for how they pay for their utilization of the VCI service.**

Conclusion

NAMD strongly supports CMS's proposed change to allow Medicaid agencies to target income and resource disregards. This flexibility would allow states and territories to tailor services to the specific needs of non-MAGI members. CMS also proposes to shift the costs of the Verify Current Income service on the Federal Data Services Hub to

Medicaid agencies starting July 1, 2024. This change would have negative fiscal impacts on Medicaid agencies and may act as a barrier to ongoing state and federal efforts to increase *ex parte* rates.

Thank you for the opportunity to provide comments on this proposed rule. NAMD looks forward to continuing to work with CMS to improve Medicaid eligibility processes.

Sincerely,

Cynthia Beane, MSW, LSCSW

Cindy Beane
NAMD Board President
Commissioner
West Virginia Department of Health and Human Resources