NAMD
National Association of Medicaid Directors

February 2, 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, the National Association of Medicaid Directors (NAMD) is pleased to offer comments on the Centers for Medicare & Medicaid Services (CMS) Interim Final Rule, Medicaid; CMS Enforcement of State Compliance With Reporting and Federal Medicaid Renewal Requirements Under Section 1902(tt) of the Social Security Act [CMS–2447–IFC].

The Interim Final Rule implements reporting requirements and enforcement authorities from the Consolidated Appropriations Act of 2023 (CAA) related to the national Medicaid redetermination process. The Medicaid redetermination process has been enormously complex, with states and territories working to redetermine eligibility for over 94 million individuals. NAMD strongly supports CMS's use of pre-compliance engagement, which has allowed federal and state/territory policymakers to collaboratively, quickly, and effectively resolve issues that have emerged over the course of the unwinding.

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 (CHIP) 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.

The Medicaid Redetermination Process Has Been Complex and Challenging

At the start of the COVID-19 pandemic, Congress enacted a continuous coverage requirement in Medicaid. In exchange for enhanced federal funding, all states and territories kept individuals enrolled in Medicaid for the duration of the COVID-19 public health emergency, even if they did not meet federal eligibility requirements. As a result, Medicaid and CHIP enrollment grew dramatically throughout the public health emergency, reaching a high of 94.1 million individuals in April 2023.

When the COVID-19 public health emergency ended in May 2023, Medicaid agencies were tasked with redetermining eligibility for over 94 million Medicaid and CHIP members. This represents an enormous and complex task. Medicaid agencies have

had to contend with the operational realities of processing a significantly higher number of renewals, challenges communicating changing eligibility requirements to Medicaid and CHIP members, new statutory requirements focused on returned mail and address updates, and technical issues with eligibility and enrollment systems.

Throughout the unwinding, Medicaid agencies and CMS have had two shared goals: ensuring that all eligible individuals remain enrolled in Medicaid and helping individuals who are no longer eligible for Medicaid transition to other forms of coverage. Medicaid agencies have pursued these goals tenaciously, making historic investments in member outreach, adopting at least 394 1902(e)(14)(a) waivers to streamline eligibility processes, investing in data systems to increase the rate of *ex parte* renewals, gathering unprecedented levels of data on redetermination outcomes, and partnering with managed care organizations, health care providers, and school systems to increase member awareness.

NAMD appreciates CMS's commitment to collaborative problem-solving throughout this process. The unwinding has illuminated long-standing challenges with Medicaid eligibility processes, including the complexity of federal eligibility regulations, low member response rates to renewal forms, and the need for additional investment in eligibility and enrollment IT systems and processes. Although addressing these challenges will require significant time and resources, they have the potential to permanently improve renewal processes for Medicaid members. Medicaid agencies look forward to continued collaboration with CMS to advance this work.

CMS's Use of Mitigation Plans has Allowed State and Federal Policymakers to Quickly, Collaboratively, and Effectively Resolve Emerging Issues

In the Consolidated Appropriations Act of 2023, Congress created new reporting requirements during the redetermination process and gave CMS new enforcement authorities. The Interim Final Rule closely mirrors these statutory requirements, including the unwinding reporting requirements that Medicaid agencies have so far complied with fully.

As discussed in the Interim Final Rule and corresponding materials, when areas of non-compliance with federal eligibility regulations are identified, CMS has elected to engage with Medicaid agencies in a pre-compliance period before moving to formal corrective action. **NAMD strongly supports CMS's consideration of mitigating circumstances and Medicaid agency actions in the pre-compliance period.** Given the size and complexity of the unwinding, it is inevitable that operational challenges, such as systems errors, will emerge. When these operational challenges have arisen, CMS's and Medicaid agencies' top priority has been resolving impacts on Medicaid members. This has generally included pausing procedural terminations for impacted populations, reinstating coverage for impacted members, and making systems fixes or adopting other strategies to prevent member impacts moving forward.

CMS's pre-compliance engagement with Medicaid agencies has been crucial to quickly and effectively resolving operational challenges. Through these engagements, CMS and states/territories have been able to quickly investigate the scope of an issue and identify actions needed to resolve impacts on members. In some cases, this has included CMS providing technical assistance to states and territories, approving additional waiver flexibilities to streamline eligibility processes, and creating connections to systems resources through the U.S. Digital Service and other entities. This open communication and collaborative problem-solving would be more difficult in a compliance environment, which is an inherently more formalized process. As detailed in the Interim Final Rule, formal compliance pathways can also be lengthy, with Corrective Action Plans taking up to 49 days from initial notice to implementation. In contrast, pre-compliance engagements have allowed CMS and Medicaid agencies to begin addressing operational challenges within days of learning of an issue.

When operational challenges emerge, state, territory, and federal focus should be on preventing and addressing impacts on Medicaid members. CMS's pre-compliance engagement approach has allowed states and territories to prioritize actions that quickly resolve issues for Medicaid members, instead of having to move through a lengthy and formal compliance process.

Conclusion

Over the past year, Medicaid agencies have been tasked with redetermining eligibility for over 94 million individuals. This is an enormously complex and challenging undertaking. NAMD strongly supports CMS's use of pre-compliance engagements and mitigation, instead of immediately using formal compliance action, when operational challenges emerge. This approach has allowed state and federal policymakers to collaboratively, quickly, and effectively resolve impacts on Medicaid members.

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

Sincerely,

Cynthia Beane, MSW, LSCW

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