May 22, 2018

Seema Verma, MPH  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS–2406-P  
P.O. Box 8016  
Baltimore, MD 21244

RE: 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)

Dear Administrator Verma:

As leading state and national organizations concerned with the health and well-being of Medicaid enrollees, we thank you for the opportunity to comment on CMS’ proposed rule "Methods for Assuring Access to Covered Medicaid Services–Exemptions for States With High Managed Care Penetration Rates and Rate Reduction Threshold." We urge you to maintain strong federal transparency and accountability requirements around provider rate setting to ensure enrollees who rely on the program as a lifeline can access the care they need.

The basic transparency requirements that were included in CMS’ November 2, 2015 final rule (the final rule) were especially important in light of the Supreme Court’s decision in Armstrong v. Exceptional Child Center1 that the federal Medicaid statute does not grant beneficiaries or providers the right to sue the state to ensure beneficiary access to covered services when rates are cut. The Armstrong ruling means that federal oversight of rates and access can only come via the managed care regulation or the fee-for-service (FFS) review process. State rate decisions exempted from both of these regulations are simply without a federal oversight process.

The process outlined in the final rule provided a formal review process for states and CMS to follow when a FFS rate reduction was proposed that might reduce beneficiaries’ access to care. It also provided a pathway for stakeholders to raise potential access problems (which would violate the federal statute) where such an opportunity for relief did not previously exist. We believe this change was an important step forward in creating transparency and patient engagement in Medicaid policymaking.

However, CMS is proposing to make changes to this final rule before the impact of the final rule and the access monitoring review plans can be fully assessed. The proposed rule will have a negative impact on

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beneficiary access to care based on the blanket approach to exempt states with total managed care enrollment of 85 percent or above and those making “nominal” rate changes from transparency and reporting requirements of the final rule. We do not believe these changes address the nuances that exist in state Medicaid programs with regards to the populations covered, the benefits offered, and delivery systems used, and will result in significant and highly vulnerable populations with no federal access oversight.

As you know from your state work, each state’s Medicaid program is unique and such state-specific design should be recognized. States with high rates of managed care penetration may carve out whole populations- like dual-eligibles or medically complex children; or they may only offer certain services-like substance use disorder treatment or dental care- through FFS despite being a predominantly managed care state. Under the proposed changes, those most in need of care in carve-outs or waivers could face access problems and insufficient federal oversight and enforcement action if a state reduces rates.

In addition, CMS does not provide a justification for, or data that support, the proposed thresholds under which a state would be exempt from the final rule requirements. For example, reduced rates identified by CMS to be “nominal” do not account for the impact that such a cut will have on providers depending on whether current Medicaid payments cover the cost of providing care to Medicaid beneficiaries; when a provider is underpaid, even a seemingly small cut can have a significant impact and over the course of several years, nominal quickly balloons to substantial. Furthermore, “nominal” should be defined state by state based upon some metric of health care spending.

The federal government has an important role to play in ensuring Medicaid beneficiaries have access to high quality, necessary services particularly in light of the Armstrong decision. The existing access review requirements this rule seeks to weaken are the primary means of enforcement outside of managed care. We urge CMS to fully implement its FFS state plan amendment requirements. Additionally, any future changes must be based on strong data, potentially from the State-by-State Medicaid and CHIP Scorecard, and related analyses that take into account the range of populations and services remaining in FFS and capture nuances in payment rates among unique state Medicaid programs.

We appreciate the opportunity to provide comments on the proposed rule, and we look forward to working with CMS to ensure all Medicaid beneficiaries have access to a range of services and providers.

Sincerely,

ADAP Advocacy Association
American Academy of Pediatrics
American Association of Healthcare Administrative Management
American Dental Association
American Dental Education Association
American Health Care Association/National Center for Assisted Living
American Muslim Health Professionals
American Nurses Association
American Physical Therapy Association (APTA)
American Speech-Language-Hearing Association
Autism Speaks
Cancer Support Community
Catholic Health Association of the United States
Center for Public Representation
Child and Family Policy Center
Children’s Hospital Association
CLASP
Community Access National Network (CANN)
Congregation of Our Lady of Charity of the Good Shepherd, US Provinces
EverThrive Illinois
Families USA
First Focus
The Jewish Federations of North America
Justice in Aging
Murray Parents Association
National Advocacy Center of the Sisters of the Good Shepherd
National Association of Pediatric Nurse Practitioners
National Black Justice Coalition
National Consumers League
National Council for Behavioral Health
National Council of Jewish Women
National Partnership for Women & Families
National Patient Advocate Foundation
National WIC Association
Not Dead Yet
Planned Parenthood Federation of America
VOR