



THE PARTNERSHIP FOR MEDICAID

December 4, 2020

Alex M. Azar II
Secretary
Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20201

Re: RIN 0991—AC24 Securing Updated and Necessary Statutory Evaluations Timely

Dear Secretary Azar,

On behalf of the Partnership for Medicaid – a nonpartisan, nationwide coalition of health care clinicians, safety net health plans, and counties – the undersigned organizations appreciate the opportunity to respond to the [notice of proposed rulemaking](#) (NPRM) on Securing Updated and Necessary Statutory Evaluations Timely (SUNSET) requirement, as published in the November 4, 2020 version of the *Federal Register*. Given the administrative burden of the proposed rule on federal agencies and the proposed rule's impact on public health, especially during the COVID-19 pandemic, **the Partnership for Medicaid recommends that the Department of Health and Human Services (HHS) rescind the proposed rule.**

This NPRM would mandate that all regulations in Titles 21, 42, and 45 of the Code of Federal Regulations (CFR) automatically expire should they fail to be renewed by a certain date. These HHS regulations, including those originally promulgated by the Centers for Medicare and Medicaid Services (CMS) that govern the Medicaid program, would expire at the latest of either:

- 1) Two calendar years after the year that this proposed rule first becomes effective,
- 2) Ten calendar years after the year that the regulation first went into effect, or
- 3) Ten calendar years after the last year in which HHS assessed and, if review is required, reviewed the regulation.

The proposed rule would require any regulation deemed to have a significant impact to undergo a formal review process, without which the regulation would expire. All told, the proposed rule would require approximately 2,500 regulations to be assessed within the initial two-year window should the SUNSET rule be finalized. The impact of this proposed rule would be enormous for Medicaid and the Children's Health Insurance Program (CHIP), which together provide coverage for more than 75 million people, including 36 million children.

The additional burden any comprehensive review may impose on agencies would result in administrative uncertainty and hinder CMS and other federal agencies' ability to administer critical health coverage programs, including Medicaid. The proposed rule's own Regulatory Impact Analysis suggests that, if finalized, the rule would require between 30,000 and 78,000 hours within the first two years to complete all relevant reviews and assessments; agency staff do not have the ability to undergo such an undertaking when resources are already stretched thin.¹ Furthermore, the automatic expiration of regulations would leave the Medicaid program crippled just when its beneficiaries need it the most.

¹ Retrieved from the Regulatory Impact Analysis (Section VI) of the proposed rule.

The Partnership is also concerned about the proposed rule's impact on public health and insurance coverage, especially during the COVID-19 pandemic. Millions of Americans have lost their jobs because of the economic uncertainty surrounding the COVID-19 pandemic and have turned to Medicaid for quality health coverage. Changes to various mechanisms that determine Medicaid eligibility, for example, may disrupt care to millions of Medicaid beneficiaries who rely on the program for critical health care needs, including prescription drugs, maternity care, long-term care, and other services. Marginalized communities, including communities of color and Indigenous communities, stand to lose even more should various civil rights protections in health care be allowed to expire.

Given the proposed rule's impact on beneficiaries, the Medicaid program, and agency functions at large, the Partnership for Medicaid opposes the proposed rule as written and urges HHS to rescind this NPRM. We stand ready to work with HHS to preserve and strengthen the Medicaid program and support its crucial role as a strong safety net for vulnerable Americans. Should you have any questions, please contact Eric Waskowicz at the American Academy of Family Physicians at ewaskowicz@aafp.org.

Sincerely,

American Academy of Family Physicians
American Academy of Pediatrics
American College of Obstetricians and Gynecologists
America's Essential Hospitals
Association for Community Affiliated Plans
Association of Clinicians for the Underserved
Catholic Health Association of the United States
Children's Hospital Association
The Jewish Federations of North America
National Association of Community Health Centers
National Association of Pediatric Nurse Practitioners
National Association of Rural Health Clinics
National Council for Behavioral Health
National Hispanic Medical Association