THE PARTNERSHIP FOR MEDICAID

September 13, 2019

Ms. 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 21244-8016
Submitted electronically to http://www.regulations.gov

Dear Administrator Verma,

On behalf of the Partnership for Medicaid—a nonpartisan, nationwide coalition of health care providers, safety net health plans, counties and labor—the undersigned organizations appreciate the opportunity to respond to the proposed rule *Medicaid Program: Methods for Assuring Access to Covered Medicaid Services – Rescission*. While we recognize the Centers for Medicare & Medicaid Services (CMS) seeks to ease what they see as unnecessary administrative burdens for state Medicaid agencies, we oppose the proposed rescission of the Medicaid access rule—including the reporting and documentation requirements that states must provide to demonstrate access to care for Medicaid beneficiaries enrolled in fee-for-service (FFS). We urge CMS to withdraw the proposed rule to rescind the existing requirements. Instead, we ask CMS to thoroughly review data that has been reported by states in their respective access monitoring review plans (AMRPs) in 2016—and upcoming Oct. 1, 2019, submissions—to better evaluate access in the Medicaid program. The agency must conduct this review to identify any deficiencies that may need to be addressed so it can ensure Medicaid beneficiaries have access to the care they need.

Medicaid serves as a lifeline for tens of millions of Americans and plays an important role in providing access to necessary health services that include maternity care, pediatric services, behavioral health services, primary and dental care, and long-term services and supports. It is critical that Medicaid beneficiaries have access to high-quality, necessary services. This is especially true for those with disabilities and chronic or complex health conditions. Delays in accessing needed treatments and services can lead to poorer outcomes and unnecessary costs to the health care system; federal oversight is needed to ensure the Medicaid program is serving our nation's most vulnerable.

The Partnership for Medicaid strongly believes that federal and state financing of Medicaid-covered services should be sufficient to ensure that Medicaid enrollees have timely access to high-quality, necessary care. This includes ensuring payments to Medicaid providers and plans are adequate—and where relevant, actuarially sound—in order to ensure access to meet the same goal. Proposals that make changes to Medicaid program requirements should balance state flexibility and innovation with necessary federal standards to protect patients, regardless of whether Medicaid is delivered through FFS or managed care. The proposed rescission of the 2015 final rule would significantly weaken ongoing monitoring and enforcement of

requirements ensuring access to care and would not appropriately balance state flexibility and beneficiary protections.

The existing regulatory access monitoring requirements are the only means of meaningful oversight and enforcement of the equal access provision of the Medicaid statute. This provision requires Medicaid provider payments be "consistent with efficiency, economy, and quality of care…and sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."[1] CMS is responsible for enforcing this provision, and we are concerned the proposed rule would relinquish that federal responsibility completely.

The access monitoring requirements enacted under the 2015 rule were positive first steps to ensure beneficiaries can access needed services. States were first required to submit an AMRP by Oct. 1, 2016, and the next submissions are due Oct. 1, 2019. The initial AMRPs submitted by states vary in quality and how access is measured. CMS should build on this first step, review 2019 submissions, and improve our understanding of access in states before loosening monitoring requirements. Any future changes to reducing monitoring requirements should be based on data and analyses, including a thorough understanding of the changes between the 2016 and 2019 monitoring reports.

While states are increasingly shifting Medicaid delivery to managed care, the populations remaining in FFS are often the most vulnerable beneficiaries, including individuals with complex health care needs and dually eligible individuals. States also often carve out certain services from managed care altogether, such as behavioral health or long-term services and supports. In the Medicaid and CHIP Payment and Access Commission's May 2018 comment letter to CMS, they noted that "more than half of Medicaid spending nationally is for services provided under FFS arrangements" and concluded that "monitoring access can be used to support assessment of program value, act as a mechanism for accountability, and help identify problems and guide program improvement work."[2]

It is critical that CMS monitor rate reductions and maintain a process for beneficiaries and providers to provide input on the implications of rate reductions. The proposed rescission of §447.204(b) through (c) would eliminate the requirement that states assess the impact of payment reductions, including considering input from beneficiaries and providers. It is critical that a public process to address insufficient payment rates is maintained. States are not the only Medicaid stakeholders—providers and beneficiaries must have the ability to seek federal redress for inadequate rates.

We are also concerned the proposed rule will have implications beyond FFS. States often look to FFS as a benchmark for capitation payments to managed care entities, making FFS rates relevant in determining whether payments to plans are actuarially sound. Insufficient rates under FFS can also undermine access in managed care, and it is important that FFS rates are evaluated to ensure access for all beneficiaries, regardless of how their benefits are delivered. Per the points above, FFS access rules have a direct impact on access for the Medicaid program at large—the burden of meeting the access and monitoring requirements in the 2015 rule is justified.

---

[1] 42 U.S.C. § 1396a(a)(30)(A)

[2] MACPAC 2018 Comment Letter to CMS

We urge CMS to identify opportunities to improve access to care, including promoting payment parity between Medicaid and Medicare when appropriate. Medicaid payment rates for many providers are often far below what Medicare pays for comparable services. Low Medicaid rates can affect provider participation and create barriers to health care access for beneficiaries. It is critical CMS look for ways to ensure strong access to care, which includes promoting payment equity to providers.

The federal government must serve as a strong steward of the Medicaid program in order to ensure beneficiaries have access to high-quality, necessary services—the existing access review requirements are the primary means of enforcement. We believe the proposed rule suggests changes that are premature and not based on sufficient data or experience. We urge CMS to fully implement the existing access requirements. Additionally, we strongly recommend that any future changes should be vetted thoroughly and finalized before current requirements are eliminated. Any future changes should be based on strong data and analyses that take into account the range of populations and services remaining in FFS, reflect input from states, beneficiaries and providers, 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 full range of services and providers. We have also attached our comments on the 2018 Medicaid access proposed rule in case they are helpful as you consider next steps on this proposed rule. If you have any questions, please contact Shelby King at the American Academy of Family Physicians at sking@aafp.org.

Sincerely,

American Academy of Family Physicians
American Academy of Pediatrics
American Dental Association
America's Essential Hospitals
American College of Obstetricians and Gynecologists
American Dental Education Association
Catholic Health Association of the United States
Children's Hospital Association
Easterseals
The Jewish Federation of North America
National Association of Community Health Centers
National Association of Pediatric Nurse Practitioners
National Council for Behavioral Health
National Health Care for the Homeless Council
National Hispanic Medical Association