



Charles N. Kahn III
President and CEO

September 12, 2019

The Honorable Seema Verma
Administrator
Center for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Re: Medicaid Program; Methods for Assuring Access to Covered Medicaid Services—
Rescission

Submitted electronically to www.regulations.gov

Dear Administrator Verma:

The Federation of American Hospitals (FAH) is the national representative of more than 1,000 investor-owned or managed community hospitals and health systems throughout the United States. Our members include teaching and non-teaching full-service community hospitals in urban and rural parts of the United States, as well as inpatient rehabilitation, psychiatric, long-term acute care, and cancer hospitals. The FAH appreciates the opportunity to provide comments to the Centers for Medicare & Medicaid Services (CMS) on the referenced Notice of Proposed Rulemaking entitled Medicaid Program; Methods for Assuring Access to Covered Medicaid Services—Rescission.

As described in further detail below, the FAH urges CMS to not finalize the proposed changes to access monitoring requirements because they would harm Medicaid beneficiaries' access to care, potentially subject providers of services for those beneficiaries with unsustainable rate reductions, and represent a significant loss of information integral to CMS's oversight of the program.

This proposed rule would eliminate the process for states to document whether Medicaid payments are sufficient to enlist enough providers to assure beneficiary access to covered care and services consistent with the Medicaid statute. This process, known as an Access Monitoring Review Plan (AMRP), was established as a way to routinely assess and ensure compliance with statutory requirements in the Social Security Act under section

1902(a)(30)(A) requiring that state Medicaid plans “assure that payments are consistent with efficiency, economy, and quality of care and are 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.” The statute addresses the concern that inadequate payment rates to providers threaten access to medical care for Medicaid beneficiaries.

The proposed rule would also eliminate the requirements that states undertake a public process to solicit input on how proposed reductions in Medicaid payment rates and restructuring payments may impact access. CMS states that it would issue guidance in the future to describe additional information that states will be required to present when they submit state plan amendments for rate reductions or restructuring that would be similar to certain AMRP activities. However, details for this future process are not provided.

FAH Does Not Support Eliminating the AMRP

Under existing AMRP requirements, states must have a plan in place to actively monitor and analyze sufficiency of access to Medicaid providers including by geographic area, by certain specific types of providers, and by beneficiary characteristics. As part of the AMRP, states are required to take into account information obtained through a public rate setting process, to include mechanisms to obtain ongoing beneficiary and provider input, to continue monitoring access following implementation of rate reductions or payment restructuring, and to act on access deficiencies.

FAH opposes CMS’s proposal to eliminate the AMRP requirements leaving in place only a requirement that states maintain documentation of payment rates. While CMS suggests that some of the elements of the AMRP process may be required via future guidance when a state submits a state plan amendment to reduce payment rates or restructure Medicaid payments – this is no substitute for an ongoing data-driven process for monitoring beneficiary access to care.

With respect to CMS’ statement that it will provide new requirements in forthcoming guidance for states to submit with future state plan amendment submissions, it provides no description of the process or the elements of an analysis that would be required. FAH is unable to support CMS’s proposal to eliminate a defined regulatory process and substitute an as yet undefined sub-regulatory process that will not move through a formal rulemaking process under which CMS can consider stakeholder comments.

Rule Would Eliminate Public Transparency when Restructuring or Reducing Rates

CMS would eliminate existing requirements for states to obtain public input on potential rate restructuring and rate reductions. It is unknown if future guidance on state plan amendments to reduce or restructure rates would include similar transparency requirements. Consistent with our comments on the AMRP above, FAH cannot support eliminating a transparent public process with the promise of a future process in which no details have been provided.

We urge CMS, in moving forward, to ensure there is an adequate opportunity for health care providers and beneficiaries to be informed about future material changes to payment rates or rate restructuring. Such public input and transparency is especially

imperative since the Supreme Court decided in 2015 (*Armstrong v Exceptional Child Center Inc.*¹) that neither beneficiaries nor providers have the right to sue states for payment rates that are so low that medical care under the program is threatened.

Loss of State Responsibility

Existing rules require states to take into account access monitoring under AMRPs and the results of the public process in proposing state plan amendments that affect payment rates. CMS is permitted to disapprove a state plan amendment if documentation of these activities is not included and can apply other compliance actions if a state does not remedy an access deficiency. These provisions would be eliminated under CMS's proposed rules.

FAH strongly opposes eliminating any responsibility for states that implement rate reductions that threaten access, that fail to monitor access or fail to remedy an access deficiency. Instead, we recommend that there are clearly identified steps that must be taken by states and by CMS to prevent deficiencies, to monitor access and to correct deficiencies. Those steps must be repeated periodically to identify disintegrating conditions which could happen over time as rates fail to keep up with the general economy rendering them increasingly insufficient over time.

Loss of Information

FAH believes that this proposed rule, if enacted, would undermine the ability of states to use AMRP tracking data to monitor access overall and to quickly identify problem areas. It would also undermine CMS's ability to ensure that states are meeting their statutory obligations to ensure sufficient access.

Managed Care and FFS Enrollment Monitoring and Oversight

Data-driven monitoring, transparent Rate Setting, and strong oversight should apply to FFS enrollment as well as to enrollees in Medicaid managed care organizations. States have the same duty under Medicaid statute to ensure that Medicaid beneficiaries have access to Medicaid services whether Medicaid is provided through independent FFS providers or managed care organizations.

FAH opposes the proposed changes to eliminate the AMRP and the public process for consideration of rate reductions and restructuring. These processes are necessary for understanding access constraints and ensuring access to Medicaid services. Those activities are critically important as Medicaid provides almost 70 million of the most vulnerable Americans with health coverage. Medicaid coverage is only meaningful if beneficiaries have an adequate selection of health care providers and facilities available and those providers and facilities are paid at levels that are sufficient to support their participation in the Medicaid program.

¹ 135 S. Ct 1378 (2015).

Thank you for the opportunity to comment on the proposal. Should you have any questions, please feel free to contact Paul Kidwell of the FAH staff at (202) 624-1531.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Kidwell". The signature is fluid and cursive, with a large initial "P" and "K".