

September 13, 2019

VIA ELECTRONIC SUBMISSION

The Honorable Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
P.O. Box 8016  
Baltimore, MD 21244-8016

**RE: CMS-2406-P2; Proposed Rule: Medicaid Program; Methods for Assuring Access to Covered Medicaid Services-Rescission**

Dear Administrator Verma:

On behalf of the more than 590,000 physicians and medical students represented by the combined memberships of the American Academy of Family Physicians, the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, the American College of Physicians, the American Osteopathic Association, and the American Psychiatric Association, we write to submit comments on the proposed rule referenced above. We read the proposed rule with great interest, as it will have far-reaching effects on patients who are enrolled in Medicaid fee-for-service (FFS).

We believe the proposed rule would greatly reduce transparency regarding access in Medicaid FFS, which continues to serve some of the most vulnerable populations in the Medicaid program. Additionally, the rule would erode the federal government's responsibility to ensure equal access in the Medicaid program, which could make it easier for states to cut provider payment rates in FFS. We are concerned that this will lead to less physician participation in the program as Medicaid already pays chronically low fees (recent surveys show Medicaid pays, on average, at 72 percent of Medicare rates).<sup>1</sup> Further cuts enabled by the proposed rule could leave our patients, particularly those with serious, chronic, or complex medical needs, with reduced access to the care they need. We urge CMS to withdraw the proposed rule, and to instead work with us to strengthen access monitoring and ensure adequate payment rates. Our specific comments are below.

**The Proposed Rule Relinquishes the Federal Government's Responsibility to Monitor Equal Access**

The Supreme Court's 2015 decision in *Armstrong v. Exceptional Child Center, Inc.* held that Medicaid providers do not have a cause of action to challenge a state's Medicaid payment rates. As such, the Supreme Court resolved it is the responsibility of the federal government to enforce the equal access provision found in 42 U.S.C. §1396a(a)(30)(A), which requires that state Medicaid provider payments be "sufficient to enlist enough providers so that care and services are available ...at least to the extent that such care and services are available to the general population in the geographic area."

CMS developed regulations to enforce this provision, effective April 2016, that require states to develop and submit to CMS an Access Monitoring Review Plan (AMRP) that specifies the data elements the state will use in assessing beneficiary access to care in a Medicaid fee-for-service delivery system. The recently released proposed rule would abdicate the federal government's responsibility to monitor access to care for patients enrolled in Medicaid. As such, we cannot support its finalization.

---

<sup>1</sup> <https://www.kff.org/medicaid/state-indicator/medicaid-to-medicare-fee-index/>

If the proposed rule were to be finalized, CMS would have scant information to determine whether a state complies with the statutory equal access requirement. The same would be true for agencies and program stakeholders at the state level, who rely on data to assess whether patients enrolled in Medicaid have adequate access to the care they need. Additionally, the initial AMRPs were submitted to CMS on October 1, 2016, meaning that the current structure used to monitor and enforce the equal access provision has been functioning for less than one full three-year cycle. Abandoning this reporting process so early into its implementation is in direct contradiction to the evaluation framework. Stakeholders, like states, the federal government, providers, and patients, need more information to evaluate whether there is acceptable access in the Medicaid program, not less.

### **Our Organizations Opposed CMS’s 2018 NPRM to Weaken the Access Rule**

In March of 2018, CMS proposed to amend the process for states to monitor access in Medicaid FFS. Specifically, under the 2018 proposed rule, states with an overall comprehensive, risk-based managed care enrollment rate of 85 percent or greater would have been exempt from conducting an access analysis or providing justification when “nominally” reducing or restructuring provider payment rates.

Our organizations submitted detailed comments<sup>2</sup> strongly opposing the 2018 NPRM, arguing that the proposed 85 percent threshold was arbitrary and would result in far less transparency into the accessibility of services for beneficiaries not enrolled in MCOs in these states, or for beneficiaries enrolled in MCOs who receive services “carved out” and covered by Medicaid FFS.

It is important to note that while the NPRM specifically addresses access monitoring and exemption for payment rate changes in Medicaid FFS delivery systems, this rule has implications for Medicaid Managed Care. Under a circumstance where states and MCOs utilize FFS payments as a benchmark for their own payments, this proposed rule could justify similar cuts to MCO provider rates. Specifically, lower FFS rates could support lower actuarially sound capitation payments to MCOs, and lower FFS rates could enable MCOs to lower their network provider payment rates correspondingly. The consequences for beneficiary access to care could be far-reaching.

Multiple data sources show that payment is the primary driver in determining physician participation in the Medicaid program, and the proposed rule could lead to increasingly insufficient Medicaid payment rates, seriously jeopardizing patients’ ability to access health services. In our comments on the 2018 NPRM, our organizations underscored the importance of the required public process to solicit input on the potential impact of proposed rate reductions. If CMS finalizes this proposed rule, states will no longer be required to undertake such a process. This public process is key to understanding access in the Medicaid program. Importantly, the current regulations include safeguards that encourage providers, beneficiaries, and other stakeholders to provide input regarding any significant proposed change in methods and standards for setting payment rates for services. The current regulations also mandate states, in addition to the 5 services categories included in their AMRPs, to monitor additional services for which the state or CMS has received a significantly higher than usual call volume of access complaints from beneficiaries, providers, or other stakeholders.<sup>3</sup>

Together, these safeguards give physicians and patients an outlet to participate in the access monitoring process. Removing the requirement to undertake a public process would deny providers the right to comment on state rate reviews or payment rate adjustments. In addition to removing the patient and provider voice from the decision-making process, such a change could eliminate essential qualitative data and testimonials from providers and beneficiaries that inform which services need to be monitored.

---

<sup>2</sup> <https://downloads.aap.org/DOFA/G6AccessComments.pdf>

<sup>3</sup> <https://www.macpac.gov/wp-content/uploads/2017/03/Monitoring-Access-to-Care-in-Medicaid.pdf>

Our members are the foundation of the U.S. health system and include the front-line physicians who care for families, adults, adolescents, women, and children in rural, urban, wealthy, and low-income communities. Our groups are unified in urging CMS to withdraw the proposed rule, and to instead strengthen the current access monitoring regulations.

Sincerely,

American Academy of Family Physicians  
American Academy of Pediatrics  
American College of Obstetricians and Gynecologists  
American College of Physicians  
American Osteopathic Association  
American Psychiatric Association