AMERICAN
SPEECH-LANGUAGE-
HEARING
ASSOCIATION

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May 22, 2018

Ms. Seema Verma
Administrator
Centers for Medicare & Medicaid Services
7500 Security Blvd
Baltimore, MD 21244

RE: File Code – CMS-2406-P

Dear Ms. Verma:

On behalf of the American Speech-Language-Hearing Association, I write to offer comments on the Medicaid Program: Methods for Assuring Access to Covered Medicaid Services-Exemptions for States with High Managed Care Penetration Rates and Rate Reduction Threshold, Proposed Rule.

The American Speech-Language-Hearing Association (ASHA) is the national professional, scientific, and credentialing association for 198,000 members and affiliates who are audiologists; speech-language pathologists; speech, language, and hearing scientists; audiology and speech-language pathology support personnel; and students.

ASHA appreciates the intent of issuing the proposed rule to provide administrative burden relief associated with Medicaid requirements for states that have raised concerns, particularly for states with high rates of Medicaid managed care enrollment. However, ASHA is concerned that the proposed rule will restrict access to covered services for individuals enrolled in Medicaid fee-for-service (FFS) and managed care plans.

Fee-for-Service

The proposed rule indicates that the number of individuals impacted by the recommendation is limited because the majority of Medicaid beneficiaries have transitioned into managed care and over half of all Medicaid beneficiaries are enrolled in comprehensive risk-based plans. Unfortunately, the proposed rule fails to recognize that many of the highest-need beneficiaries—children and adults with lifelong and profound physical, mental, and developmental disabilities, the frail elderly—continue to receive care through FFS arrangements. While the number is small, the needs are great, and gaining access to timely and appropriate care is critical.

For providers enrolled in FFS programs, the proposed rule exempts from access analyses provider pay cuts of less than 4% annually or less than 6% over two years, stating that those are nominal and, therefore, unlikely to affect access. While the Supreme Court ruling in the *Armstrong v. Exceptional Child Services, Inc*. case determined that providers could not sue states for increased Medicaid rates, the subsequent regulation (42 CFR 447.203-4) includes requirements that states provide information on the FFS population to help CMS determine whether pay cuts negatively impact access to care. By exempting these analyses, there is no incentive to provide this information; thereby, invalidating determinations about access. Without monitoring for this critical population, states would have little or no federal administrative or judicial oversight of the FFS program.

While the number of individuals in the core FFS population is small, the proposed rule fails to recognize that many services remain either entirely or partially carved out of managed care contracts. According to information provided by the Medicaid and CHIP (Children's Health Insurance Program) Payment Access Commission (MACPAC), over 40% of Medicaid beneficiaries receive at least some, if not all care through the FFS system.[*] Certain services may be carved out and other services may be included up to a limit (e.g., 30 covered speech-language pathology services for children with disabilities) with additional treatment potentially managed by the managed care organization (MCO) but paid directly by the state on a FFS basis.

Medicaid Managed Care Plans

The proposed rule also exempts states with high managed care penetration (over 85%) from the reporting requirements established in 2015. Reducing the reporting requirements for FFS significantly weakens the proposal's purpose, which impacts individuals enrolled in Medicaid managed care plans because it devalues the importance of oversight and reporting in general.

ASHA requests that CMS reconsider this proposal in light of the impact it will have on the most vulnerable individuals. The presumption that the proposal will increase access and decrease administrative burden by limiting reporting requirements and oversight is more likely to result in restricting access to covered services for individuals enrolled in Medicaid FFS and managed care plans.

In addition, ASHA recommends that CMS review state provider pay rates prior to cuts, including those that are considered nominal, and investigate the types of beneficiaries in managed care versus FFS plans. ASHA further recommends that CMS not exempt any states from access planning requirements based on "high managed care enrollment" or any other factors, such as managed care plan or waiver/demonstration plan participation. To exempt these plans reflects our concern about the exclusion of any group of Medicaid beneficiaries.

Thank you for the opportunity to provide comments on the Medicaid Program: Methods for Assuring Access to Covered Medicaid Services-Exemptions for States with High Managed Care Penetration Rates and Rate Reduction Threshold, Proposed Rule. ASHA is happy to provide any additional information that would assist CMS as you move forward with implementation. If you or your staff have any questions please contact Laurie Alban Havens, ASHA's director, health care policy, Medicaid and private health plans, at lalbanhavens@asha.org.

Sincerely,

Elise Davis-McFarland, PhD, CCC-SLP
2018 ASHA President

[*] Medicaid and CHIP Payment and Access Commission. (2017). *MACStats: Medicaid and CHIP Data Book*. Retrieved from https://www.macpac.gov/wp-content/uploads/2015/12/MACStats-Medicaid-CHIP-Data-Book-December-2017.pdf.