VIA ELECTRONIC SUBMISSION

January 31, 2020

Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-2393-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Comments to CMS-2393-P
Proposed Rule: Medicaid Program; Medicaid Fiscal Accountability Regulation

Dear Sir or Madam:

Allies for Children is a nonpartisan, Pittsburgh-based nonprofit advocating for policy and practice changes that improve the health, education and wellbeing of all children in Allegheny County. We envision a future in which every child has the opportunities and assistance necessary to develop into a healthy, educated and contributing member of the community.

We appreciate the opportunity to make these comments to the CMS proposed rule. The rule, if finalized, could have a large, harmful effect on Pennsylvania’s Medicaid budget, health care providers in our state and access to care for 2,835,163 low-income Medicaid beneficiaries, including 1,201,508 children in Pennsylvania. In Allegheny County alone, 95,695 children are enrolled in Medicaid. Medicaid covers 42% of the children in our county. Across Pennsylvania, 45% of children rely on Medicaid, yet the rule threatens to seriously disrupt that coverage.

As detailed below, we believe CMS should not finalize any of the new standards for approval and substantive rule changes for state financing and supplemental payments. Instead, any final rule should only include some limited public reporting and data collection requirements related to current state financing and supplemental payment arrangements. Once this data is reported and fully analyzed, it would allow CMS to work collaboratively with states, providers, beneficiaries and other stakeholders to develop more reasonable, narrowly-targeted and well-defined changes to state financing and supplemental payment regulations that could address potential violations of the current statutory and regulatory requirements without risking arbitrary, widespread harm to state
Medicaid programs. In contrast to this proposed rule, such an information and data collection-first approach would allow stakeholders to make meaningful, substantive comments to policy changes within any future proposed rulemaking.

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Nearly every state including Pennsylvania relies on provider taxes to help finance the state’s share of Medicaid costs. For example, in state fiscal year 2019, here in Pennsylvania, we charge assessments on hospitals, nursing facilities, and intermediate care facilities. In addition, many states including Pennsylvania use intergovernmental transfers and/or certified public expenditures as well. Furthermore, like nearly all states, Pennsylvania makes supplemental payments outside of the Medicaid Disproportionate Share Hospital (DSH) program. These payments go to providers for a variety of purposes.

The proposed rule, however, would substantially expand the scope of review and agency discretion for federal approval of state financing and supplemental payment arrangements, including those already in place, as well as impose numerous substantive changes to longstanding requirements governing such arrangements. This could prohibit or limit existing financing for Medicaid derived from provider taxes, intergovernmental transfers and/or certified public expenditures. The rule could also prohibit or limit existing supplemental payments our state is making to health care providers.

As a result, if finalized as-is, the proposed rule could dramatically reduce state financing for Medicaid in our state, cut payments to providers, threaten the financial stability of safety-net and other health care providers serving Medicaid beneficiaries, and lead to overall cuts to the Medicaid program in the areas of eligibility and benefits that reduce access to needed care for children and families in Pennsylvania if our state is unable to substitute other funding sources such as higher taxes or cuts to other parts of the budget.

Although the proposed rule threatens to seriously disrupt state Medicaid financing and supplemental payments, the proposed rule lacks any meaningful analysis of its impact. In the preamble to the proposed rule, it states that the “fiscal impact on the Medicaid program from implementation of the policies in the proposed rule is unknown.” It also states that CMS does not have “sufficient data to predict or quantify the impact of the proposed provisions on health-care related taxes...” The only impact analysis provided in the proposed rule is an estimate of the national spending effect of setting a new upper limit on supplemental payments to practitioners like physicians but it provides no state-specific estimates. CMS is required to assess and estimate the impact of the proposed rule on states, providers and beneficiaries, especially in the absence of any statutory changes. The proposed rule fails to assess its impact, merely inviting “comments from states, providers and other stakeholders on the estimates and potential state responses to these provisions.”
However, as is likely the case with many other stakeholders, we are unable to adequately assess the proposed rule, comment meaningfully on the new review standards and substantive changes to state financing and supplemental payment requirements, and/or estimate the specific impact on our state’s Medicaid budget, health care providers and beneficiaries. This is due, in part, to the complexity and highly technical nature of existing financing approaches and supplemental payments in our state, the lack of publicly available information about existing arrangements and the absence of reliable, accurate outside analysis of how the proposed rule could affect our state’s Medicaid program. It is also the result of significant uncertainty from the new vague or ill-defined standards of financing and supplemental payment arrangements that provide undue discretion to CMS in approving both existing and new state practices.

Therefore, we ask that CMS not finalize any of the new standards for review and approval and substantive rule changes for state financing and supplemental payments. Instead, any final rule should impose only limited public reporting and data collection requirements related to financing and supplemental payments that would improve transparency. Such public reporting and data collection requirements could be similar to the proposed reporting related to supplemental payments and state financing in 42 C.F.R. § 447.288(c) and to prior supplemental payment reporting recommendations of the Medicaid and CHIP Payment and Access Commission (MACPAC). CMS, however, should minimize the administrative burden on states and providers and establish a far more reasonable timeframe to allow for adequate planning and implementation by states. Otherwise the reported data may not be reliable, accurate and meaningful. This data, along with detailed CMS analysis of such information and necessary collaboration with states, providers, and beneficiary advocates, would allow for the later development of more reasonable, narrowly-targeted and well-defined approaches that could address violations of the current statutory and regulatory requirements related to financing and supplemental payments without risking indiscriminate, widespread harm to state Medicaid programs. This would allow stakeholders to subsequently make meaningful, substantive comments to any policy changes included in future proposed rulemaking.

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Respectfully submitted,

Patrick Dowd
Executive Director
Allies for Children