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CMCS Informational Bulletin

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SUBJECT: **CMS Enforcement Discretion – Medicaid Access Monitoring Review Plans**

The purpose of this informational bulletin is to inform states that the Centers for Medicare & Medicaid Services (CMS) is exercising enforcement discretion during the COVID-19 public health emergency (PHE) with regard to state submissions of updated Medicaid access monitoring review plans (AMRPs) described in 42 CFR 447.203, and will delay enforcement of the requirement under 42 CFR 447.203(b)(5)(i) that states submit updated AMRPs by October 1, 2022. As provided in 42 CFR 447.203(b)(5), states were required to submit their initial AMRPs to CMS by October 1, 2016, and must update them at least once every three years. Absent this exercise of enforcement discretion, updated AMRPs would be due to CMS by October 1, 2022. Given the demands on state Medicaid agencies during PHE and the associated resource strain, CMS is delaying enforcement of the requirement for states to submit updated AMRPs that otherwise would be due by October 1, 2022, until October 1, 2024. In the interim, as discussed in more detail below, CMS will continue to require states to demonstrate that they are meeting the statutory obligation to ensure Medicaid rates are consistent with section 1902(a)(30)(A) of the Social Security Act (the Act). Strengthening and expanding access to care is a CMS priority. This includes a broad view of access that ensures enrollment in and maintenance of coverage and that, once people are enrolled, covered services are provided in a timely, equitable, high-quality manner, regardless of delivery system.

Background

Under section 1902(a)(30)(A) of the Act, states must "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."

In the November 2, 2015 **Federal Register** (80 FR 67576), CMS published the "Methods for Assuring Access to Covered Medicaid Services" final rule with comment period that outlined a data-driven process for states to document whether Medicaid fee-for-service payments are sufficient to enlist enough providers to ensure beneficiary access to covered care and services consistent with section 1902(a)(30)(A) of the Act. The regulations provide that states must develop and submit to CMS an AMRP that is updated at least every three years for certain specified services and must identify a process to review and monitor access to care. When states reduce Medicaid payment rates or restructure them in circumstances when the changes could result in diminished access, they must implement special monitoring procedures to monitor the

effects of the rate reduction or restructuring for at least 3 years after the effective date of the change. Any time an access deficiency is identified, the state must submit a corrective action plan to CMS within 90 days after discovery and work to address the issues within 12 months.

Basis for Exercising Enforcement Discretion

During the PHE, states and providers are experiencing unprecedented resource strain, and CMS has looked to alleviate burden to the national health care system when opportunities are available. This has included temporarily suspending or changing certain reporting requirements and administrative processes otherwise required under the Medicaid statute and regulations, when necessary to ensure that sufficient administrative resources are available to respond adequately to the PHE. The volatility of the health care delivery system during the PHE may present significant barriers for states and providers to evaluate and submit timely health quality and access to care data. During this unprecedented time, many states have had to divert staff resources to making program and operational changes necessary to respond to the PHE and repeated surges in COVID-19 infections. Additionally, the AMRP process may require states to obtain certain information about health care access from providers, and many providers have been overwhelmed by an influx of patients (whether seeking treatment for COVID-19, routine or non-COVID-19-related emergent care, or care that had been delayed due to the circumstances of the PHE), as well as staff shortages.

Specific to the Medicaid AMRP process under 42 CFR 447.203, CMS is concerned that states may be unduly burdened if required to adhere to the October 1, 2022, timeline for submitting updated AMRPs, and that state resources that would be used for preparing these updates would be more appropriately devoted to ensuring that care and services are available to Medicaid beneficiaries and that providers are appropriately paid during the PHE. In part, our concern that the otherwise required timeline for AMRP updates is outweighed by the need to ensure adequate administrative resources are available to respond to the PHE is informed by our recognition that the AMRP process only applies to Medicaid fee-for-service payments, while the vast majority of Medicaid beneficiaries receive their care through managed care delivery systems. Additionally, we are concerned that data about access to and quality of care since the beginning of the PHE may reflect the extraordinary circumstances of the PHE and, therefore, may be of limited usefulness in understanding likely access to and quality of care available to Medicaid beneficiaries going forward.

Based on these concerns, CMS is providing states until October 1, 2024 to develop the AMRPs that would otherwise be due on October 1, 2022. We believe that providing states with an additional two years to develop the AMRPs is appropriate considering the potential for new surges in COVID-19 and uncertainty around the end date of the PHE. The two-year extension intends to allow states to continue to focus resources on addressing the health needs of Medicaid beneficiaries during the PHE and, as well, to conduct work necessary to resume routine operations once the PHE ends. The two-year extension should also provide time for care delivery within Medicaid fee-for-service systems to stabilize and for states to gather and present data within their access-to-care analysis that does not represent the unique conditions of the PHE as the baseline period to assess whether future proposed rate changes meet the statutory requirements.

Continued State Obligation to Ensure Access to Care

As a result of this exercise of enforcement discretion, CMS will not actively pursue enforcement of the regulatory requirement that states submit an updated AMRP by October 1, 2022, as required under 42 CFR 447.203(b)(5)(i), and will delay enforcement of the requirement to submit an updated AMRP until October 1, 2024. We believe this delayed enforcement will provide states with a reasonable timeframe for compliance with the regulatory AMRP update requirements, in consideration of the PHE and the stress it has placed on states and providers. However, states remain responsible for ensuring that Medicaid rates are consistent with section 1902(a)(30)(A) of the Act and will need to provide CMS with data and information generally consistent with the provisions of 42 CFR 447.203(b)(6) and 42 CFR 447.204(b) when proposing to reduce or restructure Medicaid payments rates through state plan amendments (SPAs). In the event that states propose SPAs that would reduce or restructure Medicaid payment rates during the PHE, CMS will work closely with states to ensure compliance with the statute. Specifically, through SPA reviews, CMS will continue to expect states present data demonstrating that access to care is consistent with section 1902(a)(30)(A), to monitor access to care data and information after implementing changes to Medicaid fee-for-service rates and remediate access to care concerns. Further, we will expect state to have conducted public processes to understand concerns from providers and stakeholders related to Medicaid rate changes in advance of submitting rate reduction or restructuring SPAs to CMS for approval. CMS will expect states to present this information upon submission of SPAs and, in the event a state does not provide this information upon SPA submission, we will formally request the information from states which may delay SPA approval. Additionally, on an ongoing basis, CMS will continue to monitor access-to-care concerns that are raised by stakeholders in particular, should such concerns arise in relation to state rate reductions.

Ensuring equitable access to health care for Medicaid and Children's Health Insurance Program (CHIP) beneficiaries is a high priority for CMS. Building upon lessons learned from implementation of the AMRP process, along with other access-related work, CMS is developing a comprehensive access strategy for Medicaid and CHIP. The goal of the comprehensive access strategy is to identify and implement ways to ensure that Medicaid and CHIP beneficiaries have access to timely, high-quality, and appropriate care in both programs and in all payment and delivery systems, regardless of whether care is delivered through fee-for-service or managed care.

Medicaid and CHIP beneficiaries face a wide range of potential barriers to accessing covered services, including behavioral health and long-term services and supports (including institutional care and home and community-based services). Such barriers can vary from people being unaware they may be eligible for a program or service, to issues with enrollment, provider participation, and service utilization. A comprehensive access strategy will enable CMS to better monitor and take action to promote more equitable access for all Medicaid and CHIP beneficiaries, consistent with applicable statutory requirements. As a first step in developing this comprehensive strategy, CMS has issued a Request for Information (RFI) on February 17, 2022, to solicit public feedback on potential approaches that support more equitable access to health care as well as address barriers faced by Medicaid and CHIP beneficiaries in getting and

maintaining health care coverage. We strongly encourage all states and stakeholders to review the RFI and provide feedback on the matters discussed in the RFI that are relevant to them.

The RFI is available at:https://cmsmedicaidaccessrfi.gov1.qualtrics.com/jfe/form/SV_6EYj9eLS9b74Npk. Stakeholders interested in responding to the RFI should follow the instructions in that document for submitting their response.

Should states have any questions about the AMRP process and the information presented within this bulletin, please email the Medicaid access to care mailbox: MedicaidAccesstoCare@cms.hhs.gov.