May 7, 2020

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Ave. SW
Washington, DC 20201

Ref: CMS-2393-P: Medicaid Program; Medicaid Fiscal Accountability Regulation

Dear Administrator Verma:

Since the Centers for Medicare & Medicaid Services (CMS) closed the public comment period for the proposed Medicaid Fiscal Accountability Regulation (MFAR) on February 1, the world has changed dramatically and in ways that were impossible to anticipate. As front-line responders to the COVID-19 pandemic, members of America’s Essential Hospitals and other health care providers now face unprecedented challenges and an uncertain future. For the reasons discussed below, America’s Essential Hospitals respectfully requests that CMS reopen the comment period for the proposed MFAR for an additional period, of at least 30 days, to allow stakeholders to address the rule’s impact in light of COVID-19.

America’s Essential Hospitals is the leading champion for hospitals and health systems dedicated to high-quality care for all, including the vulnerable. Our more than 300 member hospitals provide a disproportionate share of the nation’s uncompensated care, and three-quarters of their patients are uninsured or covered by Medicare or Medicaid. Our members provide state-of-the-art, patient-centered care while operating on margins one-fifth that of other hospitals—1.6 percent on average compared with 7.8 percent for all hospitals nationwide.1 Many essential hospitals are located in urban areas that have been the hardest hit by the pandemic, and have seen a large influx of COVID-19 patients.

America’s Essential Hospitals previously submitted comments on the MFAR on January 31. At that time, very little was known about COVID-19 or the worldwide public health crisis that was to follow. Just that day, the Department of Health and Human Services (HHS) first declared the as-yet unnamed “novel coronavirus” a public health emergency. It was not until many weeks later that the full scale of the crisis became clear, when the World Health Organization classified

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the COVID-19 outbreak a pandemic on March 11. President Trump then declared the COVID-19 outbreak a national emergency on March 13—retroactive to March 1—with states beginning to issue lockdown orders and other restrictions shortly thereafter.

COVID-19 has fundamentally altered the health care and economic landscapes. To respond to this public health crisis, hospitals and other providers mobilized immediately to test, diagnose, and treat patients with COVID-19. Essential hospitals took action by increasing facility capacity through alternative care sites, acquiring personal protective equipment (PPE) and other supplies, ensuring staff capacity, and other efforts to stand ready. These actions were critical to mitigate the spread of the virus but required considerable resources. State Medicaid programs play a critical role in this public health emergency, providing coverage for COVID-19 testing and treatment and leveraging flexibility to respond to providers’ changing needs throughout the crisis. For essential hospitals, Medicaid has been and continues to be a critical resource—especially to support response efforts. As the full extent of the economic impact of this pandemic is revealed, the importance of ensuring Medicaid program stability cannot be overstated. COVID-19 has left essential hospitals in a precarious financial position, with these fiscal pressures expected to remain for the foreseeable future.

States are experiencing unprecedented financial constraints due to COVID-19. To slow the spread of the virus, states have issued stay-at-home orders, closing businesses deemed nonessential—effectively shutting down state and local economies. Typically stable sources of state revenues, such as sales taxes, are in jeopardy since mitigation efforts have led to a sharp decline in consumer spending.² States and localities increasingly face budget deficits with the rapid decline in tax collection, reducing the resources available to support state programs, including Medicaid.³ One analysis estimates states could face shortfalls totaling as much as $500 billion for fiscal years 2020 through 2022 and state governors have called on Congress to provide that amount in federal aid to replace these lost revenues.⁴⁵ As we emerge from immediate response to the pandemic, the repercussions will continue to ripple throughout the economy, with increasing unemployment. This will result in more individuals eligible for Medicaid, further straining state resources.

These extraordinary public health and economic circumstances were unthinkable only a couple of months ago when MFAR was open to public comment. CMS cannot responsibly move forward with consideration of the rule without accounting for COVID-19. Now, more than ever, massive cuts to the Medicaid program would devastate providers, states, and patients alike. Providers and states need certainty that CMS will not issue a rule that will disrupt longstanding Medicaid

financing and payment programs, forcing states and providers to divert time and funding from the pandemic response.

As stakeholders have not yet had the opportunity to provide comment on the MFAR’s impact in consideration of COVID-19, America’s Essential Hospitals urges CMS to reopen the comment period to permit stakeholders to supplement their feedback to the agency.

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If you have questions, please contact Senior Director of Policy Erin O’Malley at 202-585-0127 or eomalley@essentialhospitals.org.

Sincerely,

Bruce Siegel, MD, MPH
President and CEO