

August 11, 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. States, health care providers, and Medicaid beneficiaries now face unprecedented challenges and an uncertain future as the nation continues to respond to the COVID-19 pandemic. We remain deeply concerned that finalizing the MFAR would only exacerbate these challenges and uncertainty, as the proposed provisions would cut at the very core of the Medicaid program by introducing unprecedented restrictions on states' ability to fund their share of the Medicaid program. **As such, and for the reasons detailed below, the undersigned organizations respectfully request that CMS withdraw the MFAR in its entirety.**

At the time our respective organizations submitted comments detailing our concerns to CMS on the MFAR, very little was known about COVID-19 or the worldwide public health crisis that was to follow. The day before comments were due, 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 on March 11 classified the COVID-19 outbreak a pandemic. President Trump on March 13 declared the COVID-19 outbreak a national emergency—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. States, hospitals, and other providers mobilized immediately to test, diagnose, and treat patients with COVID-19 and slow the spread of the virus. State Medicaid programs continue to 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. 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 states, hospitals, and other providers in a precarious financial position, with these fiscal pressures expected to remain for the foreseeable future. We remain concerned that CMS issued the MFAR without any meaningful analysis of its impact on states, providers, and, most important, Medicaid beneficiaries. The cursory regulatory impact analysis vastly understates the effects of the proposed rule. While we acknowledge the difficulties in precisely estimating the financial impact, that fact alone is reason enough to withdraw the MFAR.

Uncertainty around the financial impact of MFAR is especially concerning as states experience unprecedented financial constraints due to COVID-19. To slow the spread of the virus this spring, states issued stay-at-home orders, closing businesses deemed nonessential—effectively shutting down state and

local economies. Normally stable sources of state revenues, such as sales taxes, are in jeopardy since mitigation efforts have led to a sharp decline in consumer spending that remains even as states recover.<sup>1</sup> States and localities increasingly face budget deficits with the rapid decline in tax collection, reducing the resources available to support state programs, including Medicaid.<sup>2</sup> One analysis estimates states could face shortfalls totaling as much as \$500 billion for fiscal years 2020 through 2022, and governors have called on Congress to provide that amount in federal aid to replace these lost revenues.<sup>3,4</sup>

States already are seeing increases in Medicaid enrollment resulting from the COVID-19 pandemic—total enrollment increased in 15 states by 5.8 percent over the past three months.<sup>5</sup> These increases put pressure on state budgets facing significant revenue shortfalls.<sup>6</sup> When we emerge from the immediate response to the pandemic, the repercussions will continue to ripple throughout the economy, as unemployment is likely to continue to rise. This will result in even more individuals eligible for Medicaid, further straining state resources.

These extraordinary public health and economic circumstances were unthinkable when MFAR was first proposed. Now, more than ever, it is imperative that CMS not move forward with finalizing the rule. Massive cuts to the Medicaid program would devastate providers and states, especially as they continue to respond to the COVID-19 pandemic. This will greatly impact patients, as coverage of and access to critical benefits will be at risk if Medicaid funding is decreased or further stressed. Providers and states need certainty that the agency will not issue a rule that would disrupt longstanding Medicaid financing and payment programs, impacting state budgets and jeopardizing beneficiary access to care. **As such, we, the undersigned organizations, urge CMS to withdraw the MFAR in its entirety.**

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Sincerely,

America's Essential Hospitals  
American Health Care Association  
Association for Community Affiliated Plans  
National Association of Counties  
National Governors Association  
U.S. Chamber of Commerce

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<sup>1</sup> Chapman J, Maciag M. Why State Budget Officials Worry About COVID-19's Impact on Sales Taxes. The Pew Charitable Trusts. April 16, 2020. <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/04/16/why-state-budget-officials-worry-about-covid-19s-impact-on-sales-taxes>. Accessed July 2020.

<sup>2</sup> Walsh M. States Are in a Quandary as Taxes Evaporate and Virus Spending Soars. *The New York Times*. April 15, 2020. <https://www.nytimes.com/2020/04/15/business/economy/state-tax-revenue-debt-coronavirus.html>. Accessed July 2020.

<sup>3</sup> McNichol E, Leachman M, Marshall J. States Need Significantly More Fiscal Relief to Slow the Emerging Deep Recession. The Center for Budget and Policy Priorities. April 14, 2020. <https://www.cbpp.org/research/state-budget-and-tax/states-need-significantly-more-fiscal-relief-to-slow-the-emerging-deep>. Accessed July 2020.

<sup>4</sup> National Governors Association. Letter Regarding COVID-19 Aid Request. April 21, 2020. <https://www.nga.org/policy-communications/letters-nga/governors-letter-regarding-covid-19-aid-request/>. Accessed July 2020.

<sup>5</sup> Raman S. Medicaid enrollment increase puts pressure on state budgets. *Roll Call*. July 6, 2020. <https://www.rollcall.com/2020/07/06/medicaid-enrollment-increase-puts-pressure-on-state-budgets/>. Accessed July 2020.

<sup>6</sup> Ibid.