



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 430, 433, 447, 455, and 457

[CMS-2393-WN]

RIN 0938-AT50

Medicaid Program; Medicaid Fiscal Accountability Regulation

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule that was published in the **Federal Register** on November 18, 2019. The proposed rule would have established new reporting requirements and codified other Medicaid financing requirements, including related to permissible sources for non-federal share financing.

DATES: The proposed rule on Medicaid Fiscal Accountability Regulation, published on November 18, 2019 at 84 FR 63722 is withdrawn [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: In commenting, please refer to file code CMS-2393-WN.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. Electronically. You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.
2. By regular mail. You may mail written comments to the following address **ONLY**:
Centers for Medicare & Medicaid Services,
Department of Health and Human Services,
Attention: CMS-2393-WN,
P.O. Box 8016,
Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. By express or overnight mail. You may send written comments to the following address ONLY:

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

FOR FURTHER INFORMATION CONTACT:

Andrew Badaracco, (410) 786-4589, Richard Kimball, (410) 786-2278, and Daniil Yablochnikov, (410) 786-8912, for Medicaid Provider Payments, Supplemental Payments, Upper Payment Limits, Provider Categories, Intergovernmental Transfers, and Certified Public Expenditures.

Timothy Davidson, (410) 786-1167, Jonathan Endelman, (410) 786-4738, and Stuart Goldstein, (410) 786-0694, for Health Care-Related Taxes, Provider-Related Donations, and Disallowances.

Lia Adams, (410) 786-8258, Charlie Arnold, (404) 562-7425, Richard Cuno, (410) 786-1111, and Charles Hines, (410) 786-0252, for Medicaid Disproportionate Share Hospital Payments and Overpayments.

Jennifer Clark, (410) 786-2013, and Deborah McClure, (410) 786-3128, for Children's Health Insurance Program (CHIP).

SUPPLEMENTARY INFORMATION:

On November 18, 2019, we published a proposed rule that proposed to amend our regulations dealing with grants to states for medical assistance programs, state fiscal

administration, payments for services, Medicaid program integrity, and allotments to states and grants. (84 FR 63722). After an internal review of the proposed rule, CMS has decided to withdraw the proposed rule.

The proposed rule sought to promote accountability and transparency for Medicaid payments by establishing new reporting requirements for states to provide CMS with certain information on supplemental payments to Medicaid providers, including supplemental payments approved under either Medicaid state plan or demonstration authority, codification of parameters for Medicaid upper payment limit calculations, provider definitions associated with data reporting and Medicaid financing, Medicaid disproportionate share hospital audit requirements and changes to some existing operational processes to better align with technology improvements. This proposed rule also sought to establish additional requirements to ensure that state plan amendments proposing new supplemental payments are consistent with the proper and efficient operation of the state plan and with efficiency, economy, and quality of care. Finally, this proposed rule sought to address the non-federal share financing of supplemental and base Medicaid payments, including states' uses of health care-related taxes and provider-related donations, and other requirements for sources of the non-federal share.

We received approximately 10,188 individual comments (4,225 unduplicated comment submissions) through the extended comment period.¹ We received significant comments on the proposed rule regarding its potential impact on states and their budgets, Medicaid providers and Medicaid beneficiary access to needed services. Many commenters stated their belief that the proposed rule did not include adequate analysis of these matters. Numerous commenters indicated that CMS, in some instances, lacked statutory authority for its proposals and was creating regulatory provisions that were ambiguous or unclear and subject to excessive Agency discretion.

¹ On December 30, 2019, CMS extended the comment period for the November 18, 2019, proposed rule by 15 days, from January 17, 2020, to February 1, 2020, in response to feedback from stakeholders indicating additional time was needed to review the proposed rule in light of several holidays and the complexity of the rule.

While we continue to support the intent and purpose of the rule to increase fiscal accountability and improve transparency in the Medicaid program, based on the considerable feedback we received through the public comment process, we have determined it appropriate to withdraw the proposed provisions at this time. Moving forward, we want to ensure agency flexibility in re-examining these important issues and exploring options and possible alternative approaches that best implement the requirements of the Medicaid statute. We also believe it is important to re-examine and fully analyze the proposed Medicaid reporting requirements in consideration of the recent Congressional action through the Consolidated Appropriations Act of 2021 (H.R. 116-133, Pub. L. 116-260) which establishes new statutory requirements for Medicaid supplemental payment reporting. This withdrawal action does not limit our prerogative to make new regulatory proposals in the areas addressed by the withdrawn proposed rule, including new proposals that may be substantially identical or similar to those described therein.

Finally, the withdrawal of this proposed rule does not affect existing federal legal requirements or policy that were merely proposed to be codified in regulation, including certain provisions related to Medicaid financing and Medicaid Upper Payment Limit (UPL) requirements. For example, without limitation, this includes guidance in State Medicaid Director Letter (SMDL) #13-003, which discussed a submission process to comply with the UPL requirements; SMDL #14-004, which discussed Medicaid financing and provider-related donations; as well as State Health Officials (SHO) Letter #14-001, which addressed health care-related taxes. This withdrawal action does not affect CMS' ongoing application of existing statutory and regulatory requirements or its responsibility to faithfully administer the Medicaid program.

Dated: January 12, 2021.

Seema Verma,

Administrator,

Centers for Medicare & Medicaid Services.

Dated: January 12, 2021.

Alex M. Azar II,

Secretary,

Department of Health and Human Services.

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