AMERICAN ACADEMY *of* ACTUARIES

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January 31, 2020

Centers for Medicare and Medicaid Services (CMS)
Department of Health and Human Services (HHS)
CMS–2393–P
P.O. Box 8016
Baltimore, MD 21244–8016

Re: Medicaid Fiscal Accountability Regulation Proposed Rule (CMS–2393–P)

To Whom It May Concern,

On behalf of the Medicaid Subcommittee of the American Academy of Actuaries,[1] I appreciate the opportunity to provide comments on the proposed rule, Medicaid Fiscal Accountability Regulation (MFAR), released on Nov. 18, 2019.[2] The proposed rule includes provisions that would establish new reporting requirements for states regarding supplemental payments to Medicaid providers and limit how states are allowed to fund the qualifying non-federal share of Medicaid costs. The subcommittee supports CMS' overall objectives of improved reporting, increased transparency, and promoting fiscal accountability with regard to supplemental payments. However, we recommend allowing time for further analysis of the impacts of the components of the proposed rule to allow for the development of policies that achieve stable public programs with appropriate and fair financial accountability for both state and federal governments.

As health actuaries, we provide financial and fiscal advice to states and other governmental entities, insurers, employers, health care providers, member representatives and other health care industry stakeholders. In order to best advise those entities and make recommendations to CMS related to the full scope of the proposed rule, we recommend CMS move ahead with collection of the needed data to allow industry stakeholders to perform more in-depth analyses and inform further dialogue on other sections of the proposed rule prior to those sections being finalized. This includes deliberation on how to best transition to the desired future circumstance that promotes fiscal responsibility and stability of the Medicaid program.

Need for Additional Data

[1] The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

[2] Medicaid Program; Medicaid Fiscal Accountability Regulation, Federal Register, November 18, 2019.

As CMS notes in the proposed rule, complete information regarding the current Medicaid funding streams established by states is not available. In fact, a portion of the rule is intended to increase the transparency of those funding streams by requiring significant increases in state reporting. Comments within the narrative of the proposed rule itself[3] suggest that this rule could potentially impact billions of federal and state dollars used to fund the Medicaid program. This estimate and a 2017 by the Medicaid and CHIP Payment and Access Commission (MACPAC) analysis[4] are both based on the same 2012 data collected by the Government Accountability Office (GAO)[5]. While this analysis makes clear the magnitude of the issue, it is insufficient to illuminate potential impacts of the MFAR provisions by state.

As indicated throughout the preamble to the proposed rule, the financial data needed to calculate the MFAR impacts are difficult to find and quantify. The 2014 GAO report and the 2017 MACPAC analysis provide a good start to identifying federal impact, but an update to this data, and the more detailed state-level data collected through the additional reporting requirements proposed within MFAR offer the opportunity to greatly expand upon this existing work to fully estimate the portion of federal financing that could be impacted and the non-federal financing that needs to be restructured in each state. As actuaries, we rely on data to identify risks, design policy, and make recommendations and decisions. CMS could facilitate the analysis of the potential impact of proposed limitations to Medicaid financing by making data available to stakeholders, and allowing adequate time for analysis, development, and consideration of alternative federal and state policy proposals and feedback on those proposals.

Recommendations for Further Analysis

The subcommittee recommends providing stakeholders the data and time needed to fully analyze the impacts of the provisions of the proposed rule related to Medicaid financing and provider reimbursement, and suggests that CMS also study and share their analysis of the potential impacts of the proposed rule as described below.

The proposed rule makes the following call for comments:

…[W]e do not have sufficient data to predict or quantify the impact of the proposed provisions on health-care related taxes, although we would expect that states may modify existing state tax policy or arrangements where those taxes or arrangements would be newly be considered healthcare related under the proposed provisions. We invite comments from states, providers, and other stakeholders on the estimates and potential state responses to these provisions.

Depending upon how the proposed regulations are implemented, the limitations MFAR would place on state financing of the non-federal share could have significant and variable impacts on state Medicaid programs, Medicaid beneficiaries, Medicaid providers, and other health care industry stakeholders. Should the Medicaid program financing provisions be finalized as

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[3] https://www.federalregister.gov/d/2019-24763/p-41
4 The Impact of State Approaches to Medicaid Financing on Federal Medicaid Spending, MACPAC , July 2017
[5] Medicaid Financing: Questionnaire Data on States' Methods for Financing Medicaid Payments from 2008 through 2012 (GAO-15-227SP, March 2015), an E-supplement to GAO-14-627

proposed, states are likely to take one or more of the actions below. The impact of these actions should be evaluated and considered, with the opportunity for additional comment.

- **Change the distribution of the tax burden.** The potential impact to other market sectors of these types of actions at the state level should be fully evaluated and considered. For example, if states levy taxes currently borne primarily by Medicaid insurers on all insurers, premiums for individual and group health insurance may need to increase to cover these additional taxes. Such premium increases could affect the affordability of private insurance and could increase federal spending for the Affordable Care Act (ACA) premium tax credits.

- **Reduce Medicaid program expenditures through reductions in provider reimbursement levels or cuts to covered benefits or populations.** These actions could result in financial instability for certain providers or lead to deterioration in the health and well-being of Medicaid beneficiaries. Depending upon the magnitude of these changes, such impacts could also have spillover effects on other insurance markets. For example, reduced Medicaid provider rates could increase pressure on private insurers in other markets to increase payment rates, which could increase other insurers' premiums. Additionally, rural providers, who have struggled in recent years, may find no alternative but to close their doors due to the loss of supplemental funds. The closure of rural providers could impact the health of all rural residents regardless of their health insurance coverage. These potential impacts should be evaluated and weighed against the benefits of reductions in federal liabilities.

Clarifications Needed

Members of the subcommittee seek clarification of the following items:

- Confirmation of which, if any, of the proposed provisions are intended to apply to both managed care and fee-for-service programs and the rationale for any differences.
- Confirmation, based on the proposed definitions in 42 CFR 447.286, that if a state implemented an enhanced fee schedule supported by provider taxes, the enhanced payments would not be considered supplemental payments if the enhanced payment was paid on a claim, at the same time as the base payment, and for a specific beneficiary and service.

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Given the request to fully analyze the potential impacts on a variety of health care sectors and the lack of available data to support that analysis, we would suggest that CMS consider a staggered implementation of various aspects of the regulation. Collecting the necessary data and providing feedback to states and the public in advance about which financing mechanisms could be determined to be impermissible based on the provisions of MFAR would allow for further analysis to support a robust policy discussion including the appropriate weighing of these potential impacts against the intended outcomes of the regulation.

Should the proposed rule be finalized as a whole, CMS should consider a longer transition period to allow for collection of data and to allow states and stakeholders sufficient time to adapt to the changes -- for instance by setting a later implementation date and/or by phasing out current financing arrangements that are determined to be impermissible over several state legislative years.

As actuaries, we have a professional responsibility to the public and are concerned that the proposed rule, as written, may endanger some state Medicaid programs in the near term because some states would likely need several legislative sessions to collect data and implement alternative financing strategies. We recommend this public policy development be built on data-based demonstrations of intended and unintended consequences. This framework will give federal and state policy makers the best chance at creating policies that achieve stable public programs with appropriate and fair financial accountability for all parties.

We would welcome the opportunity to speak with you in more detail and answer any questions you have regarding these comments. Please contact Devin Boerm, deputy director of public policy, at 202-785-7850 or boerm@actuary.org to facilitate further discussions.

Sincerely,

Julia Lerche, MAAA, FSA
Chairperson, Medicaid Subcommittee
American Academy of Actuaries