



September 12, 2019

Administrator Seema Verma
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2406-P2
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Delivered electronically at <http://www.regulations.gov>

Re: Comments on CMS Proposed Rule CMS-2406-P2 “Medicaid Program: Methods for Assuring Access to Covered Medicaid Services- Rescission”

Dear Administrator Verma,

The following comments and recommendations regarding Proposed Rule CMS-2406-P2 are on behalf of the National Coalition for Assistive and Rehab Technology (NCART), a national non-profit association of suppliers and manufacturers of Complex Rehab Technology (CRT) products.

Our supplier members operate over 350 accredited supplier locations across the country, collectively providing specialized products and critical support services to hundreds of thousands of Medicaid beneficiaries in their communities. Our manufacturer members have decades of experience developing CRT products designed to address the significant medical and functional needs of people with disabilities and are recognized as the top manufacturers of CRT products.

NCART’s mission is to ensure individuals with significant disabilities such as ALS, cerebral palsy, multiple sclerosis, muscular dystrophy, and spinal cord injuries have adequate access to the CRT products and supporting services they depend on. CRT products include medically necessary and individually configured manual and power wheelchairs, seating and positioning systems, and other adaptive equipment. This specialized equipment requires evaluation, configuration, fitting, adjustment, and programming and must be supported by ongoing adjustments, modifications, and maintenance.

We appreciate the opportunity to provide the following comments and recommendations:

- 1.) CMS has the critical responsibility to establish and enforce regulations that ensure an accurate analysis of the impact that proposed state Medicaid payment reductions have on “equal access” for Medicaid beneficiaries.**

The Medicaid provisions in the Social Security Act require “states to 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”. This is a foundational principle to ensuring Medicaid beneficiaries have appropriate access to Medicaid program benefits.

CMS has the critical responsibility of monitoring and evaluating this “equal access” provision and must establish and enforce clear standards and processes for a state to follow when evaluating adequate access. We are extremely concerned with this Proposed Rule which would rescind provisions related to:

- Requirements for states to undertake access monitoring review plans (AMRPs) when planning to reduce payment rates.
- Requirements for states to undertake a public process that solicits input on the potential impact of proposed reduction or restructuring of Medicaid payment rates on beneficiary access to care.

While we recognize states would still have a responsibility to submit access information to CMS as part of State Plan Amendment (SPA) for rate reductions or restructuring, removing these provisions significantly weakens the depth and credibility of the information.

The regulations that CMS finalized in 2015 within CMS-2328-FC “Medicaid Program; Methods for Assuring Access to Covered Medicaid Services” were very positive steps. However, this Proposed Rule would be a major weakening of those standards and compromise the interests and welfare of Medicaid beneficiaries. CMS even states within the Proposed Rule that “...we believe the process described in the current regulatory text is a valuable tool for states to use to demonstrate the sufficiency of provider payment rates...”. Such valuable tools should not be discarded.

2.) This Proposed Rule should be withdrawn and CMS should publish updated regulations to ensure a thorough beneficiary access evaluation and monitoring process.

We are strongly opposed to the Proposed Rule and its rescission provisions. The rescissions would result in a major reduction in critical safeguards requiring that states conduct an appropriate review of the impact on access when proposing reductions or restructurings of Medicaid payments. Accordingly, it should be withdrawn.

CMS should not proceed with the actions outlined in this Proposed Rule and should instead develop and publish proposed standards that address any valid state concerns while strengthening the requirements for a robust access analysis. CMS should also quickly move to develop much needed similar regulations to evaluate and monitor access for Medicaid contracted Managed Care Organizations.

Moving forward with this Proposed Rule would be a major step backward in protecting access for Medicaid beneficiaries and there are much better solutions that should be published and explored by CMS to maintain/provide needed safeguards for Medicaid beneficiaries.

NCART recommends that CMS revise rather than rescind the provisions established in the 2015 Final Rule. Rather than providing sub-regulatory guidance later, we recommend that CMS:

- Identify acceptable data that will allow clear assessment of access barriers related to rates and require that data for both Medicaid Fee-For-Service (FFS) and Medicaid Managed Care programs.
- Require a clearly defined public participation and complaint process for both Medicaid FFS and Medicaid Managed Care programs when rates are being reduced, after concerns related to existing rates have been brought forward, and if there is a decline in suppliers willing to

provide products and services.

- Work with stakeholders to understand the implication that the insufficiency of current HCPCS codes has on rate setting for CRT and to determine new HCPCS coding needs that will promote an accurate access analysis for CRT.

3.) The CMS regulations developed in 2015 requiring an AMRP and other state actions should not be rescinded based on state objections, but rather the critical safeguards should be expanded and built upon.

We understand the reasons cited for generating this Proposed Rule. However, we do not believe a complete rescission of § 447.203(b), and § 447.204(b) through (c) resulting in the elimination of a well thought out regulatory process that states currently must follow for the submission of a SPA should be permitted.

The reported state concerns with the “administrative burden” of the 2015 regulations can be addressed without a wholesale rescission of the important processes that have been established. The reported state concerns regarding “high beneficiary enrollment in Managed Care” are also not a reason to rescind the current regulations, but rather a reason to move quickly to extend regulations to those Medicaid contracted Managed Care Organizations to protect the enrolled Medicaid beneficiaries.

4.) A thorough beneficiary access analysis is especially important for examining the impact of proposed Medicaid payment changes on children and adults with significant disabilities who require specialized equipment like CRT.

Suppliers and manufacturers of CRT have been unreasonable challenged to continue to provide many medically necessary products and related services due to lower payment rates. As Medicare and Medicaid become more conflated and convoluted, payment rate assessment becomes increasingly critical, especially for technologies like CRT which is not adequately segregated for purposes of such an assessment.

CMS must ensure that there is a comprehensive understanding among the states, and Medicaid Managed Care programs in particular, that the population of people with disabilities enrolled in Medicaid, or who are dually eligible for Medicare and Medicaid, are guaranteed access under the Medicaid Act to products that allow community access and maintain or improve independence and self-care in all routinely encountered environments. Not only are the program mandates different, for the most part, the enrollees frequently are as well. Children and young adults with disabilities are enrolled in Medicaid at a much higher rate than Medicare.

5.) CMS must address the urgent need for additional regulations to be developed for access analysis regarding Medicaid Managed Care Organizations.

In order to protect Medicaid beneficiaries and to enforce the provisions of the Medicaid Act, NCART believes that guidelines associated with Medicaid FFS programs must equally apply to contracted Medicaid Managed Care Organizations. For these programs to be exempt from the same oversight repeatedly creates barriers to access due to insufficient payment rates.

NCART appreciates that CMS would continue to have authority to take compliance action or other remedial action if we determine that a state is not in compliance with section 1902(a)(30)(A) of the Act, and we believe CMS needs to be particularly focused on the impact of payment rates

established by Managed Medicaid programs.

Medicaid FFS and Managed Care delivery models should be required to complete the same access reviews. NCART believes that the care mandates established for Medicaid apply to both delivery models and accordingly the same requirements to evaluate access should apply to FFS and Managed Care. To allow otherwise would further perpetuate what appears to be broad belief by many Medicaid Managed Care plans that they can apply commercial policies to reduce their costs. We believe CMS must hold the Medicaid Managed Care models to the same standards as FFS.

6.) There is a need for refinement in the information and data that is used to measure and monitor beneficiary access.

The need for clearly identified information collection is critical, not only to allow CMS to carry out its oversight role but to ensure that the assessment process is transparent and based on reliable and accurate data. To merely assume that the Medicare rate or some percentage of the Medicare fee schedule is enough to allow access ignores important differences in the Medicare and Medicaid programs such as the populations of people served, the program mandates, and the products and services routinely required. Therefore, the quality, utility, and clarity of the information to be collected must be well thought-out and should be uniformly required.

The burden of that protection has to a large extent fallen on the shoulder of suppliers and manufacturers of the technology. This is causing suppliers to close businesses and manufacturers to discontinue products and appropriate access is declining. Since specialized CRT items are grouped in the same HCPCS codes as standard Durable Medical Equipment (DME) items the collected utilization data will not highlight this problem.

NCART recommends that CMS establishes a sense of urgency and related timelines as it partners with states and other stakeholders to develop a data-driven strategy to understand access to care in the Medicaid program across FFS and Managed Care delivery systems, as well as in-home and community-based services waiver programs.

CMS' responsibility to protect mandated access to care and services in the Medicaid program is extremely important to the interests and welfare of Medicaid beneficiaries. It can only be successfully achieved if there is a deep understanding of what adequate access looks like and the factors that influence it.

NCART members are willing and have the expertise needed to assist CMS in addressing monitoring issues and seeking solutions to the identified problems while protecting access to CRT products and services for Medicaid beneficiaries with significant disabilities. Thank you for your serious consideration of the above comments and recommendations.

Sincerely,



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