January 31, 2020

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201

RE: Medicaid Fiscal Accountability Proposed Rule CMS–2393–P and CMS-2393-N

Dear Administrator Verma:

The Center for Health Affairs is a nonprofit hospital association representing 36 hospitals across nine counties in Northeast Ohio. For more than a century, The Center has advocated for policies to eliminate barriers, improve quality, and reduce the costs associated with the delivery of care.

We appreciate the opportunity to submit comments on behalf of our hospital members regarding the Centers for Medicare & Medicaid Services’ proposed rule on Medicaid fiscal accountability. Across the state of Ohio, more than 2.7 million people rely on Medicaid coverage for their healthcare, and nearly 700,000 of those Ohioans reside in our nine-county region. As you know, Medicaid recipients, many of whom are children and people who are very sick and disabled, are among our most vulnerable citizens.

While the proposed rule does not include an impact analysis, a study by the American Hospital Association estimates it will result in an annual reduction of between $37 billion and $49 billion in Medicaid spending, including an annual reduction of between $23 billion and $31 billion in total Medicaid payments to hospitals. If finalized, the rule would cripple state Medicaid program financing and force states to consider reductions in eligibility, benefits and provider payments, severely curtailing the availability of healthcare services to the 75 million individuals who receive their healthcare coverage through the Medicaid program.

The ripple effects of these cuts would extend beyond the Medicaid population. Reductions in Medicaid enrollment or provider payments would put access to care at risk for entire communities, especially those rural areas served by financially vulnerable hospitals. Already in the last 10 years, 120 rural communities in the U.S. have lost their hospitals due to closure.
Because of the catastrophic impact it would have on the nation’s healthcare system, it is important that this proposed regulation is not finalized.

CMS suggests that its intention with the rule is clarification of policies regarding providers’ role in funding the non-federal share of Medicaid. However, the rule far exceeds clarification and in fact:

- Introduces vague standards for determining compliance that are unenforceable and inconsistent with CMS’s statutory authority.
- Contains significant changes to healthcare-related taxes (provider taxes), “bona fide” provider donations, intergovernmental transfers (IGTs) and certified public expenditures (CPE), including definitional changes to supplemental hospital categories and public funds.
- Proposes to change the review process for supplemental payment programs and provider tax waivers.
- Grants CMS unfettered discretion in evaluating permitted state financing arrangements through vague concepts such as “totality of circumstances,” “net effect,” and “undue burden.”

Additionally, the proposed rule has virtually no transition timeline for states to make changes to their financing and supplemental payment programs.

We understand CMS’s interest in enhancing its stewardship of the Medicaid program through greater transparency of Medicaid financing and supplemental payments. However, the proposed regulations would restrict state access to important funding streams and introduce significant uncertainty with respect to how the agency will evaluate state approaches. Moreover, many of the proposed changes would violate Medicaid law or are arbitrary and capricious in violation of the Administrative Procedure Act.

Given these concerns, The Center for Health Affairs strongly urges CMS to withdraw the proposed rule in its entirety.

On behalf of our member hospitals and the Northeast Ohio communities they serve, we sincerely appreciate your consideration of our concerns. We hope to continue working with CMS on our shared goal of managing costs while at the same time ensuring access to quality healthcare for all Americans.

Sincerely,

Brian G. Lane
President & CEO