AMERICAN ACADEMY OF FAMILY PHYSICIANS

July 3, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Re: CMS-2442-P Medicaid Program; Ensuring Access to Medicaid Services

Dear Administrator Brooks-LaSure:

On behalf of the American Academy of Family Physicians (AAFP), representing 129,600 family physicians and medical students across the country, I write in response to the notice of proposed rulemaking, "Ensuring Access to Medicaid Services" as published in the May 3, 2023 Federal Register.

The AAFP appreciates CMS acknowledging that Medicaid payment rates can significantly impact beneficiaries' access to care and advancing proposals to improve rate transparency and monitor rate changes. As detailed further below, the AAFP recommends CMS:

- **Finalize the proposal to require states to publish fee-for-service Medicaid payment rates on a publicly accessible website and compare those rates to the applicable Medicare payment rates;**
- **For proposals to reduce or restructure payment rates, move away from the proposed two-tiered system and instead require all states to submit the additional required analysis if the proposed payment rate reduction falls below 100 percent of the Medicare rate;**
- **Require states and managed care plans paying less than 100 percent of the Medicare rate for adult and pediatric primary care and behavioral health services to demonstrate on an annual basis that they are fully meeting the equal access provision for Medicaid beneficiaries; and**
- **Pursue additional regulations, guidance and other mechanisms to increase the availability of value-based payment models designed specifically for primary care that are inclusive of more flexible and less burdensome population-based payments that support their primary care physicians' efforts to provide more comprehensive team-based services to Medicaid patients.**

Fee-For-Service (FFS) Payment Transparency

CMS requires states to assure that FFS Medicaid payments are consistent with efficiency, economy, and quality of care and allow enrollees to access these services within a reasonable range of their geographic area. To monitor if states are following these requirements, CMS requires states to submit to CMS an access monitoring review plan (AMRP) for a core set of services. In the past, this reporting has lacked specificity which resulted in lack of use among

states and CMS. As a result, CMS is proposing new requirements for the AMRP. The AAFP supports CMS's proposal to rescind the AMRP and replace them with new provisions, including:

- Requiring the state to publish all FFS Medicaid payments on a publicly accessible, state-maintained website,
- Specifying that primary care services are subject to the proposed payment analysis requirements, and
- Requiring a payment rate analysis and rate disclosure.

The AAFP strongly supports CMS' proposals to increase the transparency of Medicaid FFS payment rates for physician services and require comparative payment rate analysis and disclosure by states. Medicaid pays, on average, 66 percent of the Medicare rate for primary care services; in some states, the Medicaid rate is 33 percent of Medicare's.[1] Low payment rates in Medicaid reduce health care access for Medicaid beneficiaries and prevent primary care physicians from accepting more Medicaid patients.[2] Medicaid beneficiaries who have a primary care physician often face longer wait times and shorter, inadequate visits because of payment challenges.[3, 4] However, when Congress raised Medicaid primary care payment rates to Medicare levels in 2013 and 2014, patient access improved.[5] Given consistently low Medicaid payment rates as well as evidence indicating inequitable access to care for beneficiaries, the AAFP strongly agrees that additional rate transparency is urgently needed.[6]

Medicaid fee schedules are often publicly available but can be hard to find and interpret. If finalized, these new requirements would make Medicaid payment rates more easily accessible to stakeholders and include a relevant comparison to Medicare rates for the same service. This additional transparency will enable CMS, state Medicaid agencies, physician practices, and other stakeholders to better understand Medicaid payment rates in each state and address issues that could be negatively impacting beneficiary access and clinician participation.

This proposal is also aligned with AAFP policy. The AAFP believes transparency in health care includes reporting information that can be easily verified for accuracy. Both data and process should have transparency and an explicit disclosure of data limitations. Transparency in health care includes, but is not limited to, easy availability of payers' fee schedules. AAFP policy further states that Medicaid payment for services should be fair and adequate, and at least at Medicare rates, in compliance with the "equal access" provision of the Medicaid statute. Additionally, AAFP believes payment for primary care services should be at least equal to Medicare's payment rate for those services when provided by a primary care physician.

CMS's proposals under this provision should highlight where states Medicaid payment rates fall short of Medicare payment. **The AAFP emphasizes that Medicare payment rates have failed to keep up with inflation and should not be considered adequate to ensure equitable, timely access to care.** According to the American Medical Association's analysis of Medicare Trustees report data, Medicare physician payment has been reduced by 26 percent when adjusted for inflation over the past 20 years.[7] Practically speaking, this means that physicians are struggling to cover the rising costs of employing their staff, leasing space, and purchasing supplies and equipment - let alone make investments to transition into new payment models. In 2023, Medicare pays $33.89 ($33.8872) per relative value unit under the Medicare Physician Fee Schedule, which is less than the $36.69 ($36.6873) it paid when Medicare moved to a

single conversion factor in 1998. If the 1998 amount had simply kept pace with inflation, it would be $68.87 today. Both the Medicare Payment and Access Commission and the Medicare Board of Trustees have recently shared concerns that existing Medicare physician payment rates are failing to keep up with rising practice costs and formally recommended that Congress update payments to protect beneficiaries' access to care.[8,9]

Together, inadequate Medicare and Medicaid payment rates are jeopardizing many community-based primary care practices, driving consolidation, and eroding patients' timely, affordable access to primary care in their own neighborhood. Evidence indicates that increasing primary care payment rates improves access to care for Medicaid beneficiaries.[10] According to the National Academies, primary care is also the only health care component where an increased supply is associated with better population health and more equitable outcomes. For these reasons, the AAFP advocates for federal legislation to implement an annual inflationary update to the Medicare Physician Fee Schedule and increase Medicaid payment rates for primary care services to at least those of Medicare.

Thus, while Medicare is not a perfect comparator, we agree that it is a useful starting place because states continue to pay even lower Medicaid rates and Medicare rates are publicly available on a national basis. We urge CMS to finalize this proposal.

State Analysis Procedures for Rate Reduction or Restructuring

CMS is proposing to replace the current requirements for state plan amendments (SPAs) that propose to reduce rates or restructure payment. Under the proposal, states would provide written assurance and relevant supporting documentation to establish that (1) the proposed reductions or restructurings would result in no more than a 4 percent reduction in aggregate fee-for-service expenditures for each benefit category within a single state fiscal year; (2) services affected by the proposed reduction or restructuring would be paid at or above 80 percent of the most recently published Medicare rates for the same or comparable aggregate set of Medicare-covered services; and (3) there are no evident access concerns raised through public processes set out in § 447.203(c)(4) and § 447.204. States that don't meet these prongs would have additional, more extensive analysis requirements. The goal of structuring the reporting and analysis requirements in this manner is to incentivize states to keep their rates at or above 80 percent of the Medicare rate and avoid reducing them significantly.

The AAFP is concerned that the two-tiered structure proposed may not ensure meaningful access to care for Medicaid beneficiaries and disagrees that a 4 percent reduction threshold is sufficiently nominal. We urge CMS to reconsider this proposal. Primary care services are already undervalued in the current FFS system. When applied to a rate that is already too low, a 4 percent reduction is a significant and likely unfeasible reduction for primary care practices. Practices that care for high proportions of Medicaid beneficiaries often operate on thin margins and cannot sustain lower payment rates. We are concerned that this proposal also enables states to reduce primary care payment rates by 0-3 percent year over year, which could result in significant payment reductions over time, force practices to stop participating in Medicaid and have undetected negative impacts on access to essential primary care services.

Further, the AAFP does not believe that Medicaid payment rates equal to 80 percent of the Medicare rate are sufficient to ensure timely, equitable access to care for beneficiaries. As previously discussed, expert advisory panels have noted that current Medicare physician payment rates have failed to keep pace with rising practice costs and are jeopardizing access to care. Therefore, we do not believe that 80 percent of these already inadequate payment rates will meet the needs of Medicaid beneficiaries or sufficiently encourage states to raise payments. **The AAFP recommends CMS move away from the proposed two-tiered system and instead require all states to submit the additional required analysis if the proposed payment rate reduction falls below 100 percent of the Medicare rate.**

The AAFP firmly believes that increasing the threshold to 100 percent of the Medicare rate will more effectively encourage states to increase rates to those that are comparable to other federal payers and advance equitable access to care across programs. If the agency declines to immediately increase the threshold, we strongly recommend that CMS instead institute a graduated standard beginning with 80 percent and increasing to 100 percent of Medicare over a set period of time.

We note that some states have maintained rates well below Medicare levels and many states may change some rates very infrequently. This means that the current inadequate rates could persist for decades longer under CMS' approach or regress relative to inflation. As we noted in our comments on the Medicaid Access RFI, the AAFP urges CMS to implement an access monitoring and review strategy that continuously evaluates and addresses pervasively low payment rates, not just those that are being reduced or restructured. To accomplish this, **CMS should require states and managed care plans paying less than 100 percent of the Medicare rate for adult and pediatric primary care and behavioral health services to demonstrate on an annual basis that they are fully meeting the equal access provision for Medicaid beneficiaries.**

Finally, **the AAFP strongly urges CMS to pursue additional regulations, guidance and other mechanisms to increase the availability of value-based payment models designed specifically for primary care that are inclusive of and appropriate for Medicaid patients and their primary care physicians.** Advancing prospective, population-based payments is one essential strategy for improving equitable access to longitudinal, whole-person primary care. Prioritizing less administratively burdensome population-based payments that support primary care practices' ability to invest in team-based care is central to the AAFP Guiding Principles for Value-Based Payment and supported by the National Academies recent report. Physician-led team-based care is a proven strategy for effectively expanding access. Monitoring the impact of well-designed value-based primary care payments on access to primary care physicians will be important to evaluating success and scaling what works. We stand ready to work with CMS on these goals.

Thank you for the opportunity to provide these comments and we look forward to continuing to work with your agency to improve access to care for Medicaid beneficiaries. For additional questions, please contact Meredith Yinger, Senior Manager of Federal Policy, at myinger@aafp.org.

Sterling Ransone, Jr., MD, FAAFP
American Academy of Family Physicians, Board Chair

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