NATIONAL HEALTH COUNCIL

July 3, 2023

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Blvd
Baltimore, MD 21244

Re: Ensuring Access to Medicaid Services

Dear Administrator Brooks-LaSure:

The National Health Council (NHC) thanks the Centers for Medicare & Medicaid Services (CMS) for the opportunity to provide you feedback on the proposed rule to enhance access to Medicaid services.

Created by and for patient organizations over 100 years ago, the NHC brings diverse organizations together to forge consensus and drive patient-centered health policy. We promote increased access to affordable, high-value, equitable, and sustainable health care. Made up of more than 155 national health-related organizations and businesses, the NHC's core membership includes the nation's leading patient organizations. Other members include health-related associations and nonprofit organizations including the provider, research, and family caregiver communities; and businesses and organizations representing biopharmaceuticals, devices, diagnostics, generics, and payers.

Medicaid Advisory Committee (MAC) and Beneficiary Advisory Group (BAG) (§ 431.12)

Most importantly from a patient perspective, the proposed rule would also require states to form a BAG made up of Medicaid beneficiaries or their representatives. This new advisory group is an important step in infusing the patient voice into decisions made within the Medicaid system in a state. The CMS should make it clear, if not require, that a BAG membership represents a wide range of Medicaid beneficiaries, including members representing patient advocacy groups who represent people with chronic conditions and disabilities. Specifically, we recommend that the CMS require states to describe how they will ensure that the BAG and the MAC reflect the demographics of the Medicaid population.

Transparency will be an important component in ensuring the success of both the MAC and the BAG. The proposed rule includes proposals that will advance the transparency of these important groups, as well as provisions that both the MAC and the BAG have improved around transparency, recruitment, appointment, meetings, and recommendations. The NHC commends the CMS for these provisions.

The NHC recommends that the CMS provide further details about the activities of the MAC and the BAG to assure that both entities have real input into Medicaid programs. The BAG in particular should be given explicit responsibilities and input including but not limited to reviewing notices before they are final and discussing the Annual MLR Report, the Annual Network Adequacy and Access Assurances Report, the Managed Care Program Annual Report, and the EQRO Annual Technical Report.

It will be critical that the BAG has independent support. This should include education and technical support from experts outside of the state agency to help the BAG members understand and navigate complicated Medicaid policy. Information should be provided in plain language and experts with specialty in chronic disease health policy should be engaged to support BAG members. The NHC is happy to convene with our patient advocacy members to provide feedback and support to the CMS as it develops resources for states to implement these requirements.

BAG members should be compensated for their time spent on BAG activities. The National Health Council Fair-Market Value Calculator is an important tool for determining appropriate levels of compensation. BAG members who are also serving on the MAC should also be compensated for time spent on activities for both groups.

The NHC supports the proposal to formally change the name of state Medical Care Advisory Committees (MCAC) to the Medicaid Advisory Committee (MAC). The change better reflects the broader scope of topics the MAC would be able to address.

Moreover, the NHC continues to encourage the CMS to develop a patient engagement infrastructure that creates an ongoing dialogue about systemic issues with those most affected by them. We encourage the CMS to create an entity comparable to a state-level BAG at the national level to ensure consistency across states where appropriate.

Home and Community-Based Services (HCBS)

One of the most important affordances of Medicaid to many people with chronic diseases and disabilities is the unique access it provides to long-term services in the home and community. However, those services are optional and quality and access can vary greatly by state. The new rule makes significant progress in advancing both access to and quality of HCBS. The NHC appreciates the increased requirements for functional assessments and person-centered planning to assure services are aligned with individual needs. The grievance system for HCBS in fee-for-service plans and improved incident reporting requirements will assure that beneficiaries are safer and able to access their rights similarly to the way those in managed care can now.

Finally, many people with chronic diseases and disabilities rely on direct care workers for their health and independence. This is a part of the health care workforce that is often neglected and where shortages are striking[1]. The proposed “minimum

[1] Direct Care Workforce Shortages Have Worsened in Many States During the Pandemic, Hampering Providers of Home and Community-Based Services | KFF

performance level," defined as spending at least 80% of all payments for homemaker services, home health aide services, and personal care services on compensation for direct care workers, will help address these ongoing issues.

Medicaid Payment Rates

Medicaid payment rates have a significant impact on access to care for patients. If rates are out of alignment for a specific service, specialty, or geographic area, it can result in limited access to providers for specific – and often most vulnerable – Medicaid beneficiaries.

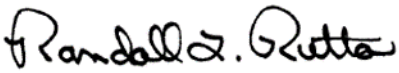
The NHC supports the proposal to require states to analyze Medicaid rates for primary care, OB/GYN, and behavioral health services relative to Medicare. This will provide protection to assure that Medicaid rates for these critical services are aligned with a national baseline. While the identified services are appropriate for starting to align Medicaid payments, there are additional services and providers that are equally critical to people with chronic diseases and disabilities. We recommend that the CMS develop a pathway for expanding the number of services reviewed over time to include payment rates for services such as specialty care, care delivered by non-physician providers, and care delivered in clinics and other settings to capture what is most important. We encourage the CMS to work with the patient community to help identify the universe of services most important to people with chronic diseases and disabilities.

The NHC supports a clear process for the CMS review of rate reductions, including a streamlined process if certain criteria are met, but we suggest a higher threshold for streamlined review rather than the 80% of Medicare standard in the proposed rule. If more feasible, this could also be phased in over time. Given that payment rates are already low in many cases, we suggest a smaller trigger for more reliable benchmarks for services that are very heightened review than the 4% reduction in the proposed rule. The CMS could also consider analysis to identify common services in Medicaid (e.g., pediatric, labor & delivery) but much less common in Medicare.

Conclusion

The NHC thanks the CMS for the opportunity to provide input on this important issue. Please do not hesitate to contact Eric Gascho, Senior Vice President of Policy and Government Affairs, if you or your staff would like to discuss these comments in greater detail. He is reachable via e-mail at egascho@nhcouncil.org.

Sincerely,



Randall L. Rutta
Chief Executive Officer