

January 31, 2020

Submitted electronically via the Federal eRulemaking Portal: <http://www.regulations.gov>

The Honorable Seema Verma Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2393-P

Re: Medicaid Program; Medicaid Fiscal Accountability Regulation [CMS-2019-0169]

Dear Administrator Verma,

Vizient, Inc. appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services (CMS) proposed Medicaid Fiscal Accountability Rule (CMS-2303-P) ("Proposed Rule" or MFAR) as many of the proposed policies have a significant impact on our members and the patients they serve.

Background

Vizient, Inc. provides solutions and services that improve the delivery of high-value care by aligning cost, quality and market performance for more than 50% of the nation's acute care providers, which includes 95% of the nation's academic medical centers, and more than 20% of ambulatory providers. Vizient provides expertise, analytics, and advisory services, as well as a contract portfolio that represents more than \$100 billion in annual purchasing volume, to improve patient outcomes and lower costs. Headquartered in Irving, Texas, Vizient has offices throughout the United States.

Recommendations

Medicaid supplemental payments are crucial to providers' sustainability and state Medicaid budgets. In our comments, we respond to the various issues raised in the Proposed Rule and urge CMS to refrain from finalizing MFAR. Vizient believes the Proposed Rule would unnecessarily and excessively limit states' flexibility in how they design their Medicaid program, including the provision of supplemental payments. Vizient is deeply concerned CMS's proposed policies needlessly disrupt states' Medicaid programs such that hospitals, patients and beneficiaries will be significantly and negatively harmed. While we recommend CMS withdraw the Proposed Rule, we thank CMS for the opportunity to share our views.

Regulatory Impact Analysis

In the Proposed Rule, CMS states their goal is to improve analysis and oversight of supplemental payments.¹ Yet, when determining the Proposed Rule's anticipated effects, CMS acknowledges that "the fiscal impact on the Medicaid program from implementation of the policies in the Proposed Rule is unknown."² Some estimates found the Proposed Rule would reduce total Medicaid payments to hospitals by \$23-31 billion annually.³ Vizient is concerned CMS's finalization of the Proposed Rule would not just severely negatively impact providers, but could ultimately threaten access to care for the nation's most vulnerable patients.

Vizient also believes the Proposed Rule would undermine the functionality of Medicaid programs by imposing policies that are not necessary to achieve CMS's stated need to improve analysis and oversight. In the Proposed Rule, CMS clarifies that it advanced the Proposed Rule because it does not have the necessary data at the state and provider level to perform adequate analysis and oversight of supplemental payments.⁴ In addition, CMS indicates it decided not to advance certain policies, such as eliminating supplemental payments, because "this option could have been a huge burden on states" and "would have eliminated an important avenue for states potentially to reward providers... and to address urgent access problems that may arise."⁵ Yet, CMS's payment and financing proposals impose excessive burdens on states and limit how they can work with providers, without clarifying how these proposals are needed to facilitate CMS's access to data. For example, CMS proposes to limit supplemental payments to physicians and other practitioners such that Medicaid reimbursement would be reduced by \$222 million.⁶ And, despite CMS clarifying that it lacks data to project the impact on health-care related taxes, the agency proceeds to propose policies that modify how CMS evaluates tax waivers and then limits the term of approvals to only three years, among other financing changes.⁷ In regard to oversight, the Proposed Rule only indicates that data obtained from quarterly and annual reports would allow for greater oversight.⁸ Since CMS clarifies that annual and quarterly reporting requirements would allow for oversight, and does not make the same assertion regarding the proposed payment and financing policies, Vizient recommends CMS withdraw the Proposed Rule to prevent implementing policies with unknown consequences that are not clearly necessary for analysis and oversight.

¹ 84 Fed. Reg. 222 at 63774

² 84 Fed. Reg. 222 at 61773

³ See American Hospital Association, Financial Impact Analysis: Proposed Medicaid Fiscal Accountability Rule (MFAR) Could Result in Deep Medicaid Cuts, available at: <https://www.aha.org/lettercomment/2020-01-21-resources-medicaid-fiscal-accountability-proposed-rule>

⁴ 84 Fed. Reg. 222 at 63774

⁵ 84 Fed. Reg. at 63774

⁶ 84 Fed. Reg. 222 at 63773

⁷ 84 Fed. Reg. 222 at 63773

⁸ 84 Fed. Reg. 222 at 63773

State Flexibility

As stated in the Proposed Rule, the Medicaid program was established as a federal-state partnership for the purposes of financing, but states have considerable flexibility in designing their Medicaid programs in accordance with the federal Medicaid statute and regulations.⁹ Vizient is concerned the Proposed Rule offers policies that deviate from the long-standing flexibility provided to states. For example, CMS proposes to limit states' use of key funding tools, such as intergovernmental transfers (IGTs) and certified public expenditures, and imposes additional burdens on states by requiring them to provide unnecessary detail to CMS regarding prospective funding decisions. The Proposed Rule also creates uncertainty regarding approval processes for supplemental payment arrangements because limited information is provided regarding CMS's proposed evaluation of Medicaid plans' consistency with Section 1902(a)(30)(A) of the Social Security Act. Vizient believes this unreasonably rigid proposed regulatory framework should be withdrawn as it simultaneously provides CMS with broad authority while limiting states' authority in a manner inconsistent with fundamental principles of the Medicaid program.

Vizient also has concerns that the proposed changes would create serious workforce issues by threatening different graduate medical education (GME) funding streams. For example, the proposed standards associated with supplemental payments are vague and give CMS unreasonably broad discretion to exclude GME payments from supplemental payments. In addition, the proposal to limit the types of funds that could be used for IGTs is narrow and detracts from states' ability to define which entities are public, ultimately restricting opportunities for states to increase their non-Federal revenue. As CMS is aware, GME is a crucial and strategic component of workforce development that can help ensure providers, including specialty physicians, are accessible to communities in need, among other benefits. Vizient believes the proposed changes lack clarity and flexibility that will have long-term repercussions for the health care workforce and patients.

In addition, the Proposed Rule would force states to review and revise their Medicaid funding arrangements and payments to providers based on new limits for physician supplemental payments, among other changes. Given the proposed constraints to the non-Federal funding sources and limitations on uses of supplemental payments, certain funding arrangements would be eliminated if the Proposed Rule is finalized. Vizient anticipates that states operating under tight timelines and budgets would be forced to increase taxes to sustain their Medicaid programs. While it is unclear whether CMS's intent is to raise taxes, Vizient encourages the agency to avoid perpetuating tax increases by maintaining states' flexibility regarding Medicaid funding.

⁹ 84 Fed. Reg. 222 at 63722

Access to Care

Vizient is sensitive to CMS's desire to strengthen oversight in the Medicaid program. However, the complex nature and wide range of changes contemplated in the Proposed Rule go beyond oversight needs by fundamentally altering financing options and supplemental payments. The proposed changes uniquely jeopardize patient access to care in settings more financially dependent on supplemental payments, such as rural hospitals and children's hospitals. From 2013-2017, there have been 64 rural hospital closures and the Government Accountability Office recognizes Medicare and Medicaid uncompensated care payments (e.g., Medicaid DSH payments, upper payment limits and uncompensated care demonstration payments) as key funding streams to these hospitals.¹⁰ In 2017, the Children's Hospital Association reported that 92% of children's hospitals receive Medicaid payments (including DSH and tax appropriation payments) at less than cost.¹¹ Consequently, the anticipated disruption to Medicaid financing and provider payments under the Proposed Rule may spur even more hospital closures and further risk access to care for those in rural areas and children. To avoid such harm, Vizient recommends CMS withdraw the Proposed Rule.

Reporting Burden

In the Proposed Rule, CMS specifies several new reporting requirements for states that would increase the frequency of reports and scope of data provided to CMS, including detailed information regarding supplemental payments and upper payment limit demonstrations. CMS also outlines other reporting systems, such as the Transformed Medicaid Statistical Information System (T-MSIS), and notes it is working with the states to improve these systems. In the Proposed Rule, CMS does not elaborate on the necessity of each additional reporting requirement to achieve specific oversight goals. Vizient encourages CMS to reconsider the necessity and value of the many, additional proposed reporting requirements given that efforts to enhance current reporting systems are already underway and additional requirements may be unnecessary.

As CMS is aware, the Patients over Paperwork initiative aims to reduce unnecessary burden, increase efficiencies and improve the beneficiary experience.¹² Given the degree of additional reporting requirements and anticipated harms to patients described in our comments, we believe that the Proposed

¹⁰ Government Accountability Office, (August 2018). Rural Hospital Closures, GAO-180-634, available at: <https://www.gao.gov/assets/700/694125.pdf>.

¹¹ Children's Hospital Association, (2017). Data Examines Medicaid Underpayment in Children's Hospitals, available at: <https://www.childrenshospitals.org/Newsroom/Childrens-Hospitals-Today/Issue-Archive/Issues/Fall-2017/Articles/Data-Examines-Medicaid-Underpayment-in-Childrens-Hospitals>

¹² Centers for Medicare and Medicaid Services, (2020). What is Patients over Paperwork? Available at: <https://www.cms.gov/Outreach-and-Education/Outreach/Partnerships/PatientsOverPaperwork>.

Rule counters broader efforts of the Administration. If CMS finalizes the Proposed Rule, Vizient encourages the agency to significantly reduce reporting requirements and maintain beneficiary access to care to better align rulemaking with the goals of Patients over Paperwork initiative.

Stakeholder Review and Analysis

While Vizient appreciates CMS's decision to extend the comment period for the Proposed Rule, we remain concerned that the 15-day extension still does not provide adequate time for stakeholder review and analysis, as stakeholders urged CMS to provide a 60-day extension. Given the degree of uncertainty Vizient, other stakeholders and CMS describe related to Proposed Rule and the limited timeframe for stakeholders to carefully analyze its implications, Vizient is apprehensive about the Proposed Rule's intended and unintended consequences. Should CMS disregard recommendations to withdraw the rule, Vizient suggests CMS take a conservative rulemaking approach by finalizing only those changes that stakeholders, including hospitals, indicate would not disrupt the Medicaid program (and its fiscal sustainability) and threaten access to care for the nation's most vulnerable patients. Further, Vizient encourages CMS to more carefully review its proposed implementation policy and, if the Proposed Rule is finalized, suggests providing states with more flexibility and time to adapt to the new regulations.

Conclusion

Vizient welcomes CMS's extensive discussion of options and its emphasis on requesting comments, which provides a significant opportunity for stakeholders to inform the agency on the impact of specific proposals.

Vizient membership includes a wide variety of hospitals ranging from independent, community-based hospitals to large, integrated health care systems that serve acute and non-acute care needs. Additionally, many are specialized, including academic medical centers and pediatric facilities. Individually, our members are integral partners in their local communities, and many are ranked among the nation's top health care providers. In closing, on behalf of Vizient, I would like to thank CMS for providing us the opportunity to comment on this important Proposed Rule. Please feel free to contact me or Jenna Stern at jenna.stern@vizientinc.com, if you have any questions or if Vizient may provide any assistance as you consider these issues.

Respectfully submitted,



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