



September 13, 2019

Seema Verma, MPH  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
PO Box 8016  
Baltimore, MD 21244-8016

**Re: CMS-2406-P2**

**Re: Medicaid Program; Methods for Assuring Access to Covered Medicaid Services-Rescission**

Dear Administrator Verma:

On behalf of our 40,000 members, the American College of Emergency Physicians (ACEP) appreciates the opportunity to comment on a proposed rule that eliminates current requirements around developing, submitting, and updating access monitoring review plans (AMRPs) for Medicaid services provided through a fee-for-service (FFS) delivery system.

The proposed rule would eliminate all the current AMRP requirements for states, replacing a previous proposal that would have only modified the requirements in states that have 85 percent or more of their Medicaid population enrolled in comprehensive, risk-based Medicaid managed care plans.<sup>1</sup> One of the main reasons for the proposal is to reduce burden on states, since many states have a low percentage of Medicaid FFS beneficiaries. CMS states in this proposed rule that although the agency is removing the AMRP requirements, “states still would be obligated by the statute to ensure Medicaid payment rates are sufficient to enlist enough providers to assure that beneficiary access to covered care and services are available under the plan at least to the extent such care and services are available to the general population in the same geographic area, particularly when reducing or restructuring Medicaid payment rates through SPAs.”<sup>2</sup> CMS plans to issue subregulatory guidance to inform states on the types of information and data that agency would consider to be acceptable.

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<sup>1</sup> Medicaid Program; Methods for Assuring Access to Covered Medicaid Services—Exemptions for States With High Managed Care Penetration Rates and Rate Reduction Threshold, 83 Fed. Reg. (March 23, 2018). ACEP’s comments on the previous proposed rule are available at: <https://www.acep.org/globalassets/uploads/uploaded-files/acep/advocacy/federal-issues/comment-letters/acep-response-to-proposed-rule-on-exemptions-to-methods-for-assuring-access-to-covered-medicaid-services.pdf>.

<sup>2</sup> Medicaid Program; Methods for Assuring Access to Covered Medicaid Services—Rescission Proposed Rule, 84 Fed. Reg. 33724 (July 15, 2019).

Both Medicaid FFS and managed care organization patients have been particularly vulnerable to less than adequate networks and access to primary care. Unfortunately, emergency physicians have witnessed this trend for years. It is critical for all Medicaid beneficiaries to have access to a full range of health care services. People who do not have access to care are more likely to defer seeking more routine care or visiting a primary care physician or specialist for more minor conditions or symptoms. Such deferral or delay will often result in their condition or symptoms becoming exacerbated, and eventually result in a trip to the emergency department (ED). At this point, due to the progression of their condition, their care in the ED will be much costlier and more complex than if they had earlier access to more routine care in a physician's office.

While CMS does plan on issuing guidance and requiring states to provide the agency with information upon request, without AMRPs, it is unclear how CMS will actually enforce network adequacy requirements, including those under Section 1902(a)(30)(A) of the Social Security Act—which 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.*” Therefore, we urge CMS to include specific language in the final rule about how the agency will ensure that Medicaid FFS beneficiaries have adequate and appropriate access to care, so that these beneficiaries are able to seek treatment early before having to possibly make an unavoidable visit to the ED. CMS should also discuss potential corrective actions the agency would take against states that did not comply with all pertinent statutory requirements.

We appreciate the opportunity to share our comments. If you have any questions, please contact Jeffrey Davis, ACEP's Director of Regulatory Affairs at [jdavis@acep.org](mailto:jdavis@acep.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Vidor E. Friedman". The signature is fluid and cursive, with a large loop at the end.

Vidor E. Friedman, MD, FACEP  
ACEP President