MACPAC

Commissioners

Sara Rosenbaum, JD, *Chair*
Marsha Gold, ScD, *Vice Chair*
Brian Burwell
Sharon Carte, MHS
Andrea Cohen, JD
Gustavo Cruz, DMD, MPH
Toby Douglas, MPP, MPH
Christopher Gorton, MD, MHSA
Herman Gray, MD, MBA
Stacey Lampkin, FSA, MAAA, MPA
Norma Martínez Rogers, PhD, RN, FAAN
Charles Milligan, JD, MPH
Sheldon Retchin, MD, MSPH
Peter Szilagyi, MD, MPH
Penny Thompson, MPA
Alan Weil, JD, MPP

Anne L. Schwartz, PhD
Executive Director

August 16, 2016

The Honorable Sylvia Mathews Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

RE: CMS-6068-P Medicaid/CHIP Program; Medicaid Program and Children's Health Insurance Program (CHIP); Changes to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs in Response to the Affordable Care Act

The Medicaid and CHIP Payment and Access Commission (MACPAC) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services (CMS) proposed rule, Medicaid/CHIP Program; Medicaid Program and Children's Health Insurance Program (CHIP); Changes to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs in Response to the Affordable Care Act, 81 Fed. Reg. 40596 (June 22, 2016).

MACPAC is a non-partisan legislative branch agency that provides policy and data analysis and makes recommendations to Congress, the Secretary of the U.S. Department of Health and Human Services, and the states on a wide range of topics related to Medicaid and CHIP. The Commission also is charged with reviewing regulations that affect access, quality, or efficiency of health care for the Medicaid and CHIP populations.

The Commission supports the use of effective program integrity tools to help achieve value in the Medicaid program by ensuring that federal and state dollars are spent appropriately on delivering quality, necessary care, and preventing fraud, waste, and abuse from taking place. In its March 2012 report to Congress, the Commission recommended that the Secretary should ensure that program integrity efforts make efficient use of federal resources and do not place an undue burden on states or providers; simplify and streamline regulatory requirements; and take steps to eliminate programs that are redundant, outdated, or not cost-effective. The Commission also specifically addressed eligibility quality control and suggested that CMS develop new approaches to improve the efficiency and effectiveness of these efforts to promote overall program integrity.

The proposed rule will make progress towards these recommendations by

Medicaid and CHIP Payment and Access Commission

1800 M Street NW
Suite 650 South
Washington, DC 20036

www.macpac.gov
202-350-2000
202-273-2452

updating the Medicaid Eligibility Quality Control (MEQC) and Payment Error Rate Measurement (PERM) programs based on changes to Medicaid and CHIP eligibility under the Patient Protection and Affordable Care Act (ACA, P.L. 111-148, as amended) and implementing other improvements to the PERM program. The Commission supports the promulgation of this rule.

The proposed rule addresses many of the concerns previously raised by the Commission, among them overlap and duplication of effort between PERM and MEQC. The regulation proposes to replace the current approach with a national contractor model, which would create clearer differentiation between PERM and MEQC. Several elements of the proposed rule (e.g., aligning the review period with the fiscal year used by most states, using the same universe for PERM eligibility and claims review, and using a federal contractor to conduct eligibility reviews) should reduce the administrative burden on the states. Further, the proposal to restructure MEQC into a pilot program that states must conduct during the off years from PERM should help reduce redundancies between MEQC and PERM during PERM measurement years, while allowing CMS to maintain continuous federal oversight of state Medicaid and CHIP eligibility processes.

However, because the proposed rule is silent on many aspects of eligibility review, it is difficult for the Commission to determine if the rule will be sufficient to address all of the ACA's mandated changes to Medicaid and CHIP eligibility processes. For example, the proposed rule notes that eligibility errors resulting from determinations of Medicaid or CHIP eligibility delegated to and made by the federally facilitated marketplace will be included in the national improper payment rate. However, CMS does not describe how these determinations will be reviewed, nor does it commit to root-cause analysis or developing and publishing a corrective action plan for these errors. In several places, the proposed rule indicates that CMS intends to issue subregulatory instructions to states but provides no detail on what these instructions may contain. Finally, the proposed rule deletes the existing regulation (42 CFR 431.980) relating to eligibility review procedures, as these will no longer be state responsibilities under the proposed federal contractor model, but provides little detail on the eligibility review procedures that the federal contractor will follow. We suggest that CMS make the details of eligibility review procedures available to the public so that stakeholders can understand the standards and processes being used to evaluate the accuracy of Medicaid and CHIP eligibility determinations.

The Commission supports the proposal to restructure MEQC into a pilot program that states must conduct during the off years from PERM concurrent with corrective action plans related to the errors identified during the PERM measurement. This is one way to reduce redundancies and administrative burden on the states. At the same time, it is important that the MEQC pilots and PERM corrective action plans be thoughtfully designed to promote overall program accountability. For example, a legitimate and valuable rationale for development of the MEQC pilot approach could include testing the effectiveness of the PERM corrective action plan so that adjustments could be made prior to the next measurement. In addition, while the PERM universe will no longer include a review of negative cases to determine whether there were inappropriate denials, the PERM corrective action plan could require consideration of whether actions states take to reduce eligibility errors will also avoid increases in improper denials.

As CMS evaluates other comments on the proposed rule and develops additional guidance for states and contractors when the PERM and MEQC programs are restarted, MACPAC suggests that it consider the following:

- incorporate eligibility process measures into MEQC pilots (e.g., timeliness of eligibility determination, accuracy of account transfers between the federally facilitated marketplace and the state Medicaid agency); and
- include in eligibility review procedures a mechanism or process to determine whether the automated eligibility processes required by the ACA are functioning accurately and whether eligibility category assignments result in the appropriate federal match rate being applied.

Finally, issues of data availability and transparency have been longstanding concerns of the Commission, as noted frequently in our reports to Congress. We suggest that CMS commit to making much of the information associated with eligibility quality control public (e.g., detailed results, MEQC pilot plans, PERM/MEQC corrective action plans) in the final rule. This would help state and federal policymakers ensure accountability for taxpayer dollars, evaluate program effectiveness and performance, and facilitate evidence-based decisionmaking about future program changes.

The Commission recognizes the importance of eligibility quality control in supporting overall Medicaid program integrity goals but also in promoting overall program accountability and public confidence. We appreciate the challenge of developing a new rule that harmonizes multiple statutory requirements and believe that the proposed rule strikes an appropriate balance. In the Commission's view, there is value in producing an overall error rate that reflects the general health of the program in protecting itself against improper payments, and encourage CMS, in finalizing this rule, to ensure that the methodology measures the performance of state and federal eligibility agencies across the range of their responsibilities. We look forward to the implementation of the final rule in order to provide stakeholders with valid, reliable information on the accuracy of eligibility determinations in the Medicaid and CHIP programs.

We appreciate the opportunity to provide comments on this proposed regulation.

Sincerely,

Sara Rosenbaum, JD
Chair

cc: The Honorable Orrin G. Hatch, Chairman, Committee on Finance, U.S. Senate
The Honorable Ron Wyden, Ranking Member, Committee on Finance, U.S. Senate
The Honorable Fred Upton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives
The Honorable Frank Pallone Jr., Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives