

January 4, 2021

Commissioners

Melanie Bella, MBA, *Chair*
Charles Milligan, JD, MPH,
Vice Chair
Thomas Barker, JD
Tricia Brooks, MBA
Brian Burwell
Martha Carter, DHSc, MBA, APRN,
CNM
Frederick Cerise, MD, MPH
Kisha Davis, MD, MPH
Toby Douglas, MPP, MPH
Leanna George
Darin Gordon
Christopher Gorton, MD, MHSA
Stacey Lampkin, FSA, MAAA, MPA
Sheldon Retchin, MD, MSPH
William Scanlon, PhD
Peter Szilagyi, MD, MPH
Katherine Weno, DDS, JD

Anne L. Schwartz, PhD,
Executive Director

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

RE: CMS-9123-P Medicaid Program; Patient Protection and Affordable Care Act; Reducing Provider and Patient Burden by Improving Prior Authorization Processes, and Promoting Patients' Electronic Access to Health Information for Medicaid Managed Care Plans, State Medicaid Agencies, CHIP Agencies and CHIP Managed Care Entities, and Issuers of Qualified Health Plans on the Federally-facilitated Exchanges; Health Information Technology Standards and Implementation Specifications

Dear Administrator Verma:

The Medicaid and CHIP Payment and Access Commission (MACPAC) appreciates the opportunity to comment on the proposed rule by the Centers for Medicare & Medicaid Services (CMS) and the Office of the National Coordinator for Health Information Technology (ONC) referenced above and published in the Federal Register on December 18, 2020.

As you know, 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 the State Children's Health Insurance Program (CHIP). As described in its authorizing statute, MACPAC is required to review and make recommendations regarding policies affecting access to covered items and services (§ 1900(b)(1) of the Social Security Act). The comments provided below stem from this obligation. In addition to providing comments, we also respond to a request for information regarding behavioral health providers.

Comments

The proposed rule would streamline processes for prior authorization. It would also create new requirements for Medicaid and CHIP fee-for-service programs and managed care plans and for qualified health plans (QHPs) on the federally



facilitated exchanges, which are covered under federal rules. These requirements build on those in the CMS Interoperability and Patient Access rule (CMS-9115-F), which was finalized in 2020.

MACPAC is generally supportive of efforts to reduce payer and provider burden and improve patient access to health information. Moreover, we agree that efforts to improve interoperability could potentially lead to better care coordination for Medicaid and CHIP beneficiaries as well as improved continuity of care.

However, the period allowed for public comment—just 17 days spanning a period with three federal holidays—is insufficient given the complexity of the proposed rule and the new requirements it will impose on states and health plans. While the Administrative Procedure Act (P.L. 79-404) generally requires agencies to provide a 30-day comment period when promulgating rules, agencies may forgo this requirement if they have a good cause that compliance would be impracticable, unnecessary, or contrary to the public interest. However, the notice of proposed rulemaking makes no mention of good cause and provides no explanation for the shortened comment period.

The proposed rule also exempts Medicare Advantage (MA) plans from the new requirements, even though such plans were subject to the prior requirements upon which this proposed rule builds. The preamble to the proposed rule acknowledges that this would “create misalignments between Medicaid and Medicare that could affect dually eligible individuals enrolled in both a Medicaid managed care plan and an MA plan.” Given current misalignments between the two programs that complicate the ability to integrate care for this high-cost, high-need population, MACPAC questions the wisdom of creating additional ones. Although the agency suggests that it will monitor the proposed rule’s implementation to test whether it should also apply to MA plans, the rule does not provide a rationale for this exemption. Given the interaction between Medicaid and MA plans, it would be preferable to address this concern and allow for a 60-day comment period as required for Medicare rules.

Request for Information Regarding Behavioral Health Providers

The notice of proposed rulemaking also includes a request for information on how to help behavioral health providers leverage technology to exchange health data to improve care quality and coordination in a more agile fashion. As part of our work to improve care for patients diagnosed with substance use disorder (SUD) or mental health conditions, MACPAC has focused on integration of physical and behavioral health services. The Commission’s March 2016 and June 2017 reports to Congress commented on the fragmented systems for mental health and SUD services. We noted that specialty behavioral health treatment providers and programs interact on a limited basis with other parts of the health care system. In addition, SUD treatment is often not well coordinated or integrated with other mental health or the treatment of physical health conditions (MACPAC 2016, 2017). While there are multiple barriers to clinical integration, MACPAC’s most significant work focused on the federal regulations under 42 CFR Part 2 (Part



2) that make it difficult for providers to share information that would improve patient care. In our March 2018 report, we recommended that the Secretary issue subregulatory guidance to clarify key parts of Part 2 in order to facilitate improved information sharing (MACPAC 2018).

At the Commission's December 2020 meeting, the Commission focused on another barrier to integration: the relatively low use of certified electronic health record technology (CEHRT) that supports sharing of standardized health records with physical health providers (Pervin and McMullen 2020). Among other things, the Commission found behavioral health treatment facilities use electronic means for basic clinical functions at a lower rate compared to hospitals. Moreover, non-federally owned behavioral health facilities have lower rates of basic electronic health record (EHR) adoption and lower rates of electronic patient data sharing compared to federally owned facilities. Among other things, low rates of CEHRT use among behavioral health providers stem from numerous financial and legal barriers to receive and share data within the health care system, including costs related to the adoption of CEHRT, lack of adequate inclusion in federal efforts to digitize health records, and confusion around Part 2 segmentation requirements. This is an area where MACPAC expects to continue working in the months ahead and we will keep CMS apprised of our progress.

Thank you for your attention to this matter.

Sincerely,



Melanie Bella, MBA
Chair

References

Medicaid and CHIP Payment and Access Commission (MACPAC). 2016. Chapter 4: Integration of Behavioral and Physical Health Services in Medicaid. In *Report to Congress on Medicaid and CHIP*. March 2016. Washington, DC: MACPAC. <https://www.macpac.gov/publication/integration-of-behavioral-and-physical-health-services-in-medicaid/>

Medicaid and CHIP Payment and Access Commission (MACPAC). 2017. Chapter 2: Medicaid and the Opioid Epidemic. In *Report to Congress on Medicaid and CHIP*. June 2017. Washington, DC: MACPAC. <https://www.macpac.gov/publication/medicaid-and-the-opioid-epidemic/>

Medicaid and CHIP Payment and Access Commission (MACPAC). 2018. Chapter 2: Substance Use Disorder Confidentiality Regulations and Care Integration in Medicaid and CHIP. In *Report to Congress on Medicaid and CHIP*. June 2018. Washington, DC: MACPAC. <https://www.macpac.gov/publication/substance-use-disorder-confidentiality-regulations-and-care-integration-in-medicaid-and-chip/>

Pervin, A. and E. McMullen. 2020. *Integrating Clinical Care through Greater Use of Electronic Health Records by Behavioral Health Providers*. Presentation before the Medicaid and CHIP Payment and Access Commission, December 10, 2020, Washington, DC. <https://www.macpac.gov/publication/integrating-clinical-care-through-greater-use-of-electronic-health-records-by-behavioral-health-providers/>

