American Association on Health & Disability
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AAHD - *Dedicated to better health for people with disabilities through health promotion and wellness*

LAKESHORE

December 30, 2020

Seema Verma, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9912-IFC
P.O. Box 8016
Baltimore, MD 21244-8016

RE: **Comments on CMS-9912-IFC**
Center for Medicare and Medicaid Services Interim Final Rule: Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency

Medicaid Maintenance of Effort (MOE) Protections

Dear Administrator Verma:

The American Association on Health and Disability and the Lakeshore Foundation appreciate the opportunity to provide comments.

The American Association on Health and Disability (AAHD) (www.aahd.us) is a national non-profit organization of public health professionals, both practitioners and academics, with a primary concern for persons with disabilities. The AAHD mission is to advance health promotion and wellness initiatives for persons with disabilities. AAHD is specifically dedicated to integrating public health and disability into the overall public health agenda.

The Lakeshore Foundation (www.lakeshore.org) mission is to enable people with physical disability and chronic health conditions to lead healthy, active, and independent lifestyles through physical activity, sport, recreation and research. Lakeshore is a U.S. Olympic and Paralympic Training Site; the UAB/Lakeshore Research Collaborative is a world-class research program in physical activity, health promotion and disability linking Lakeshore's programs with the University of Alabama, Birmingham's research expertise.

The Families First Coronavirus Response Act (FFCRA), signed into law on March 18, includes an option for states to receive enhanced federal Medicaid funding. In exchange for the additional funds, states must agree to comply with maintenance of effort (MOE) protections. These protections help ensure individuals are able to get and stay covered during the crisis and receive needed services. The FFCRA includes an explicit requirement to preserve enrollee's existing benefits – both their enrollment in Medicaid overall, and the services for which they have been eligible. At a time of such turmoil, Congress chose to protect enrollees and ensure access to services by maintaining the "status quo."

We are writing to express our deep concern about several provisions of this Interim Final Rule (IFR). In a reversal of CMS's stated policy from March to October 2020, this IFR would now allow states to impose numerous types of coverage restrictions for individuals who are enrolled in Medicaid, including reduced benefits; reduced amount, duration, and scope of services; increased cost-sharing; and reduced post-eligibility income. The IFR will also result in terminations for some individuals who should not be terminated. We oppose these revisions to the MOE, which are inconsistent with the FFCRA and will result in harm for Medicaid enrollees. We also oppose allowing states to circumvent required transparency procedures for 1332 waivers and receive enhanced funding despite refusing to cover COVID-19 vaccination for some Medicaid enrollees. We recommend that CMS withdraw these provisions.

Reduction of Optional Benefits

This rule gives states sweeping authority to reduce optional Medicaid benefits; cut the amount, duration and scope of benefits; increase utilization management; increase cost-sharing; and reduce post-eligibility income – all with no consequences for their enhanced matching funds under the FFCRA. These changes contravene the letter and intent of the statute, and will result in significant harm for enrollees.

Optional Medicaid benefits include essential services like physical and occupational therapy, dental and vision services, rehabilitation including psychiatric rehabilitation, and home and community-based services (HCBS). HCBS is particularly essential to the health, wellness, and community living integration of persons with significant disabilities. HCBS providers are facing significant financial strain. The National Health Law Project cites that among HCBS providers serving persons with intellectual disability/developmental disability: 77% have closed one or more programs.

Reductions in the Amount, Duration and Scope of Services

The IFR would allow states to change the amount, duration, and scope of services. Persons with significant disabilities, facing the threat of COVID-19 are trying to cope with services and

supports. Cuts to the amount, duration, and scope of services threaten the health and wellness of these vulnerable persons and undermines their ability to participate in community living.

Increased Cost-Sharing

The IFR would allow states to increase cost-sharing, which would also harm Medicaid enrollees. This at a time of serious state and local government financial stress and Medicaid recipients and their families facing unemployment and financial crisis.

Coverage Tiers

CMS should abandon the coverage tiers system in the IFR. The IFR would allow states to move people from one eligibility category to another in certain circumstances, even when that would result in an individual receiving fewer benefits. This system violates the FFRCA, which requires preserving individuals' benefits, and can cause substantial harm. This harm will disproportionately fall on certain groups, including people with disabilities and older adults.

Adding complexity to program administration will further confuse Medicaid recipients and their families. Transferring persons from HCBS status to Medicaid expansion category will reduce benefits, services, and supports and increase cost sharing requirements.

1332 Waiver Changes

Under the IFR, CMS also proposes to allow the "modification" of public notice, comment, and hearing requirements for Section 1332 waiver requests pursuant to the Affordable Care Act, as well as post-award public hearings. These exceptions conflict with 1332 statutory requirements, and are overbroad and unnecessary. Transparency and public engagement are fundamental components for public education and program accountability.

Thank you for the opportunity to comment. If you have any questions please contact Clarke Ross at clarkeross10@comcast.net.

Sincerely,

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