Insights

MFAR Dies, but Not Without Leaving a Trace- New Supplemental Payment Reporting

January 14, 2021

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As we previously reported, on September 14, 2020 CMS Administrator Seema Verma announced, via a tweet, that CMS was withdrawing the proposed rule titled "Medicaid Fiscal Accountability Rule" ("Proposed Rule"). While the Proposed Rule was marketed as promoting transparency of the Medicaid program, the Proposed Rule went much further by including numerous provisions and requirements that would impact States' financing of Medicaid payments. While the Proposed Rule was ultimately pulled from the unified regulatory agenda and is expected to be withdrawn from the Federal register in the near future[1], there is more to the tale. States and Providers will now have information regarding their Medicaid supplemental payments and programs submitted to the Federal government and published to the CMS website due to a change that, up to this point, has garnered little attention or press.

Within the 5,500+ page Consolidated Appropriations Act of 2021 that Congress passed and the President signed into law on December 27, 2020 ("2021 Act"), Congress included language requiring supplemental payment reporting, similar to the reporting required within the Proposed Rule. Specifically, Title II, Section 202 of the 2021 Act amends Social Security Act §1903 to require that no later than October 1, 2021, the Secretary of the Department of Health and Human Services (HHS) establish a system for each State to submit reports on supplemental payments data as a requirement for a State plan or State plan amendment that would provide for a supplemental payment. The 2021 Act defines supplemental payment as a payment to a provider that is in addition to any base payment made to the provider under the Medicaid State plan or under demonstration authority, excluding disproportionate share hospital (DSH) payments.

Such reporting shall include:

1. An explanation of how supplemental payments made under the State plan or a State plan amendment will result in payments that are consistent with Social Security Act §1902(a)(30)(A), including standards with respect to efficiency, economy, quality of care, and access, along with the stated purpose and intended effects of the supplemental payment.

2. The criteria used to determine which providers are eligible to receive the supplemental payment.

3. A comprehensive description of the methodology used to calculate the amount of, and distribute, the supplemental payment to each eligible provider, including:

    a. data on the amount of the supplemental payment made to each eligible provider, if known, or, if the total amount is distributed using a formula based on data from 1 or more fiscal years, data on the

total amount of the supplemental payments for the fiscal year or years available to all providers eligible to receive a supplemental payment;

b. if applicable, the specific criteria with respect to Medicaid service, utilization, or cost data to be used as the basis for calculations regarding the amount or distribution of the supplemental payment; and

c. the timing of the supplemental payment made to each eligible provider.

4. An assurance that the total Medicaid payments made to an inpatient hospital provider, including the supplemental payment, will not exceed upper payment limits.

5. If not already submitted, an upper payment limit demonstration under 42 CFR 447.272.

In addition, such reports and related data are to be made publicly available on the CMS website. The 2021 Act only includes reporting requirements and does not go further and adopt the other financial limitations contained in the Proposed Rule.

For questions regarding Medicaid supplemental payments and the new reporting requirements please contact Meghan M. Linvill McNab.

[1] See Seema Verma's January 7, 2021 tweet stating in part "Today I took action to withdraw the proposed Medicaid Fiscal Accountability Rule (MFAR) from the federal register. While we support its intent, further work is needed to ensure accountability for states while protecting critical safety-net care for vulnerable patients. (1/2) While the proposed rule will be withdrawn, I thank Congress for recently enacting new payment transparency requirements which help accomplish our goals. (2/2)"