

Insights

Just Released: Proposed Rule on Medicaid Fiscal Accountability

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On November 12, 2019, Seema Verma, Administrator for the Centers for Medicare and Medicaid Services (“CMS”) spoke to the National Association of Medicaid Directors. As part of that speech, Administrator Verma emphasized the need for transparency in Medicaid programs, particularly Medicaid supplemental payment programs. Immediately following her speech, CMS announced the publication of a proposed rule addressing Medicaid Fiscal Accountability (“Proposed Rule”).

The press release and fact sheet summarizing the Proposed Rule note several key provisions, including:

- Establishing provider-level payment reporting.
- Sun-setting supplemental payment programs after no more than three years, with the option to request renewal.
- Requiring the use of OMB-approved templates and CMS guidelines on acceptable UPL calculations.
- Defining base and supplemental payments and clarifying definitions and processes associated with non-federal share financing arrangements and provider ownership categories.
- Requiring IGTs be derived from state or local tax revenues and clarifying the term “public funds” for purposes of funding the non-federal share.
- Requiring the Medicaid provider to receive and retain 100% of the supplemental payment, preventing states and units of government from re-using Medicaid payments as the source of the non-federal share for additional payments.
- Clarifying the change of ownership transactions conducted on paper, without a change in operations, cannot qualify for additional Medicaid payments on the basis of the purported ownership transfer.

The Proposed Rule also contains numerous provisions related to Health Care-Related Taxes and Donations and Medicaid Disproportionate Share Hospital (DSH) payments.

A new rule governing supplemental payments has been expected for some time. In 2015, the Office of Management and Budget (“OMB”) identified a forthcoming rule that would change how supplemental payments were paid and the basis upon which a provider could qualify. However, the Spring 2018 Unified Agenda and Fall 2018 Unified Agenda revised the scope of the forthcoming rule to refer to Medicaid fiscal responsibility – increasing accountability, transparency, and clarity through improved reporting of Medicaid payments. CMS has continually



expressed its desire for additional transparency with these programs, as most recently communicated in an April 2019 Senate Finance Committee report on supplemental payments. This Proposed Rule, while consistent with CMS' desire for transparency, also contains additional requirements not otherwise anticipated.

We will continue to analyze the Proposed Rule and will be available to answer any questions about how this Proposed Rule may impact existing Medicaid programs and/or financial arrangements. CMS is taking comment on the Proposed Rule until 60 days after the date it is officially published in the Federal Register, as early as Mid-January 2020.

Please contact Meghan M. Linvill McNab or Amanda K. Schipp for questions.