

LEGAL UPDATES

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# CMS Withdraws Proposed Medicaid Fiscal Accountability Rule

On September 14, 2020, the Centers for Medicare & Medicaid Services (CMS) announced via Twitter that it was withdrawing from its regulatory agenda the proposed Medicaid Fiscal Accountability Rule (MFAR) it introduced last November citing regulatory and financial concerns from states and healthcare providers amid the current COVID-19 pandemic.

## What MFAR required and why it was opposed

The proposed rule would have:

Implemented significant requirements for Medicaid supplemental payment programs;

Restricted the use of certain funds as the non-federal share of Medicaid payments;

Established new requirements for states proposing supplemental payments; and

Required states to report certain information to CMS about their Medicaid supplemental payment programs, including information about upper payment limits.

In addition, the rule would have considerably impacted and restricted the way states currently finance the non-federal share of their Medicaid payments, including the use of provider taxes and provider-related donations. CMS stated that it intended for the proposed rule to provide more transparency, consistency and efficiency in the Medicaid supplemental payment process, as well as close what CMS believed to be questionable financing mechanisms.

However, the rule was opposed by many state officials, many prominent healthcare associations, including the American Hospital Association and patient advocacy groups. They were concerned that these changes would significantly reduce Medicaid funding and result in unintended and harmful consequences, many of which would cause undue delays and reductions to Medicaid payments as states would be forced to reexamine and restructure the way their Medicaid programs operate. These concerns were heightened as a result of the ongoing COVID-19 crisis, which has placed significant financial strains on both governmental entities and healthcare providers.

### **What this means to you**

CMS Administrator Seema Verma stated that the decision to withdraw the rule was in response to above concerns. However, based on the administrator's tweet, it appears that the proposed rule has been withdrawn temporarily pending further study and may be reintroduced in the future. Despite its withdrawal, it has long been CMS' position that it does not need formal rulemaking authority to impose some of the principles outlined in the proposed rule. Therefore, we will continue to monitor CMS updates for relevant Medicaid developments and additional guidance. Your healthcare organization should continue to stay nimble, keep records, and be prepared to update policies and procedures in accordance with CMS' latest guidance.

### **Contact us**

If you have questions on how best to navigate quickly evolving CMS compliance issues, contact Eric Weatherford, Jameson Sauseda or your Husch Blackwell attorney.

### **Comprehensive CARES Act and COVID-19 guidance**

Husch Blackwell's CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.