

May 22, 2018

**VIA ELECTRONIC SUBMISSION**

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
P.O. Box 8016  
Baltimore, MD 21244-8016

**Attention: CMS-2406-P  
Medicaid Program; Methods for Assuring Access to Covered Medicaid Services-  
Exemptions for States with High Managed Care Penetration Rates and Rate  
Reduction Threshold**

Dear Sir or Madam:

Thank you for the opportunity to comment on proposed rule CMS-2406-P, “Medicaid Program; Methods for Assuring Access to Covered Medicaid Services-Exemptions for States with High Managed Care Penetration Rates and Rate Reduction Threshold.”

These comments are submitted by Disability Rights Wisconsin in its capacity as the Protection and Advocacy system for people with disabilities in Wisconsin. We are writing on behalf of that significant portion of our constituents who rely on Medicaid to meet their health care needs. As a disability advocacy organization, we are particularly concerned about how these proposed changes to the Access Rule at 42 CFR 447.203-204 would impact access to needed care for the thousands of people with disabilities who are covered by Medicaid in Wisconsin. We firmly believe that any source of health coverage must ensure access to timely, affordable and high-quality health care that meets the specific needs of people with disabilities; Medicaid is no exception.

Medicaid can’t do its job as a health insurer if it doesn’t know whether the people it covers have actual access to the services they need. For people with disabilities in fee-for-service (FFS) Medicaid in Wisconsin, the Access Rule issued by CMS in November 2015 was intended to give CMS and our state Medicaid agency the information it needed to make evidence-based determinations about the accessibility of covered services and the effect of proposed provider payment reductions on access. It was also intended to make the process of measuring and improving access in FFS Medicaid transparent to stakeholders and the public.

The current Access Rule provides important protections for people with disabilities enrolled in Medicaid and the providers that serve them. These requirements are designed to ensure that state agency decisions to reduce or restructure FFS payments to providers are transparent and informed by analysis and stakeholder input. This is particularly important in ensuring continued, sustained access to EPSDT services, including primary care, physician specialist care, behavioral health, and dental care.

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*Proposed rule CMS-2406-P would effectively gut the Access Rule, to the severe detriment of people with disabilities and other Medicaid populations in Wisconsin.* The proposed rule would allow Wisconsin (once managed care market share is achieved) to cut its provider payments in any Medicaid service category by 4% in one year, or 6% over two years, without conducting an access review to demonstrate sufficient access, without obtaining input from beneficiaries, providers and other affected stakeholders on the impact of a proposed rate cut on access, and without submitting an access review to CMS to evaluate when it reviews the proposed rate cut and its impact. This would expose providers serving people with disabilities in FFS Medicaid to significant, non-trivial rate reductions from payment rates that are already low. Rate cuts of 4%/6% will not increase access to providers; instead, they will lower provider participation, thereby reducing access to needed services by our constituents.

Not only would this leave the people with disabilities remaining in FFS Medicaid (and their providers) without the Rule's procedural protections against harmful rate cuts, it could also affect access by people with disabilities enrolled in Medicaid managed care. To the extent Wisconsin bases all or part of its capitation payment rates to MCOs and HMOs on FFS payments, or if individual MCOs or HMOs base their payment rates to network providers on FFS payments, a cut in FFS payment rates could lead to cuts in payments to MCO network providers as well.

People with disabilities covered by Medicaid in Wisconsin would be far better served by strengthening the Access Rule, not gutting it. There have been only two years of operational experience with the Access Rule. It is wrongheaded to retreat from it at this time.

We urge CMS to withdraw the proposed changes and instead require the next round of Access Monitoring Review Plans to use a standardized set of data sources that would better inform CMS and state agency decision-making, as well as stakeholder and public understanding, regarding the access implications of cutting FFS provider payment rates for people with disabilities and other Medicaid populations.

Thank you for your consideration of our comments. If you have any questions or need any further information, please contact me.

Sincerely,

s/

Mitchell Hagopian

Attorney