



CHILDREN NOW



Association of
Northern California Oncologists



March 25, 2015

Andy Slavitt, Administrator
Centers for Medicare & Medicaid Services (CMS)
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, D.C. 20201

RE: California's Section 1115 Medicaid Waiver

Dear Administrator Slavitt:

We the undersigned, respectfully urge CMS to require California to conduct an independent assessment of Medicaid provider reimbursement rates as a condition of approval of the state's 1115 Medicaid Waiver. This assessment should be completed by the second year of the Waiver.

We appreciate the opportunity to work with the Centers for Medicaid and Medicare Services (CMS), the California Health and Human Services (CHHS) Agency and the Department of Health Care Services (DHCS) to implement the state's newest Section 1115 Medicaid Waiver. We are pleased the state of California has shown a commitment to seeking stakeholder input regarding the implementation of the Waiver and look forward to reviewing and offering comments throughout the waiver renewal process.

The passage of the Affordable Care Act provides a new opportunity to shift and share financial resources within the Medi-Cal program. While we applaud the Governor's push to implement the Affordable Care Act, which provides 4 million more Californians with coverage, coverage is not enough. This is especially true for the most vulnerable populations--seniors, persons with disabilities and children. For example, the Medi-Cal program added nearly 1 million youth (up to age 20) to the Medi-Cal program, making it the largest number of children the program has ever seen. The increase of vulnerable populations covered by Medi-Cal, like children, highlights the fact that all patients must also have meaningful and timely access to medical care.

As such, we believe **an independent assessment of rates is necessary**. We are requesting that CMS require California to commission an independent study on rates in order to better understand how to increase participation from providers in the Medi-Cal program. We would like CMS to model this requirement after the one imposed on the state of Florida. In Florida's most recent Section 1115 Medicaid Waiver, approval of the extension of the Waiver required

the commissioning of an independent report to “review the adequacy of payment levels, and the adequacy, equity, accountability and sustainability of the state’s funding mechanisms for these payments.”¹ We encourage CMS to require California to do the same.

An independent analysis is a critical component in determining both the baseline rates and the level of additional payments required to maintain equal access to care as required under Medicaid law. Specifically, the Medicaid Act requires that a state plan:

“...provide such methods and procedures relating to the utilization of, and payment for, care and services available under the plan . . . as may be necessary . . . to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.”²

We believe California’s low rates are not enough to enlist providers so that care and services are available, as required by federal statute. This fact was explored in a recent California Health Care Foundation report on physician participation in Medi-Cal during 2011 and 2013. The report found that:

- The ratio of primary care doctors participating in Medi-Cal was 35 to 49 FTEs per 100,000 enrollees, significantly less than the range of 60 to 80 the federal government estimates is needed.
- Only 69 percent of physicians had any Medi-Cal patients in their practice, significantly lower than the percentage of practices with Medicare patients (77 percent) and much lower than the percentage of practices with privately insured patients (92 percent).
- There is severe mal-distribution of Medi-Cal visits among those physicians who participate in Medi-Cal. About 35 percent of physicians accounted for 80 percent of Medi-Cal visits, and about 34 percent accounted for the remaining 20 percent of Medi-Cal patients.
- Emergency doctors, hospitalists, anesthesiologists, and others who work primarily in hospitals had the highest rate of Medi-Cal participation (82 percent), while psychiatrists had the lowest (47 percent).³

In California, fee-for-service rates are considered when determining actuarially sound rates for managed care plans. A July 2014 U.S Government Accountability Office (GAO) report⁴ states

¹ [Florida State Medicaid 115 Renewal Waiver, 31 July 2014.](#)

² 42 U.S.C. §1396a(a)(30)(A) (hereafter Section 30(A))

³ [Physician Participation in Medi-Cal. August 2014.](#)

that California’s fee-for-service payment rates are 61 percent lower than that of private insurance. These low rates are reflected in managed care, as managed care reimbursement rates are 65 percent lower than private insurance.⁵ Not only are adequate rates necessary to ensure access, they are vital to the financial survival of the Medicaid program. This was made clear in a recent report by the GAO.

In January 2015, the GAO⁶ named Medicaid a “high risk” program; citing the size, growth, diversity of programs and inadequate fiscal oversight as reasons why the sustainability of the Medicaid program is “at risk.” Particularly, the report states that access to appropriate care as well as the ability for managed care plans to be actuarially sound are key factors that threaten the viability of the Medicaid program. The GAO states: “CMS cannot ensure the quality of the data used to set MCO payment rates or whether states’ rates are appropriate, and this lack of assurance places billions of federal and state dollars at risk for misspending.”

It is this inability to ensure whether rates are appropriate that we hope an independent assessment of rates will address.

Indeed, courts have found that California’s Medi-Cal rates do not satisfy the access requirements of Section 30(A). In assessing state legislation in 2008 that sought to impose Medi-Cal rate cuts, the Ninth Circuit Court of Appeals found that the state failed to study the effect of the proposed rate reduction and ignored its own Legislative Analyst warning that the ten percent rate reduction had “the potential to negatively impact the operation of the Medi-Cal Program and the services provided to beneficiaries by limiting access to providers and services.” *See Indep. Living Ctr. of S. Cal., Inc. v. Maxwell-Jolly*, 572 F.3d 644, 656 (9th Cir. 2009) *vac’d and remanded on other grounds in Douglas v. Indep. Living Ctr.*, 132 S. Ct. 1204 (2012). On a different occasion, the Ninth Circuit noted that “California did nothing whatever to study the likely effects . . . on the ‘efficiency, economy, and quality of care’ or the availability or service providers, before enacting and implementing [the provider reductions at issue],” and that the court could “not condone such complete abdication” of the State’s responsibilities under Section 30(A). *ARC of California v. Douglas*, 757 F.3d 975, 988 (9th Cir. 2014) (emphasis in original). In February 2015, a federal district court issued a permanent injunction concerning California’s Medi-Cal rates for developmentally disabled services and “enjoined [the State] from making any future changes to payments [re]ceived by providers without complying with the requirements” Section 30(A). *Arc of California v. Douglas*, 2015 U.S. Dist. LEXIS 18241, 18 (E.D. Cal., Feb. 11, 2015).

⁴ [GAO Report: Medicaid, Comparisons of Selected Services under Fee-for-Service, Managed Care, and Private Insurance July 2014](#)

⁵ Information based on 2009 data.

⁶ [GAO Report: Medicaid a High Risk Program. January 2015.](#)

With nearly 9 million Californians expected to receive their benefits through a Medi-Cal managed care plan and 3 million through fee-for-service by the middle of 2016, it is critically important to ensure these beneficiaries are receiving access to needed medical services. We believe that the findings of the HHS OIG, GAO as well as similar findings and inquiries by California officials⁷, We believe that the findings of the HHS OIG, GAO as well as similar findings and inquiries by California officials⁸, indicate that the rates paid for this population are inadequate to offer reasonably sufficient, much less robust Medi-Cal fee-for-service or managed care networks. We firmly believe that this low participation is a result of low rates in both the fee-for-service and the managed care system.

The goal of this waiver is to allow California to experiment with innovative ways to improve patient care, as well as reimburse, recruit and retain physicians for the Medi-Cal program. As such, we urge CMS to make an independent assessment of rates a priority in the renewal of California's Section 1115 Medicaid Waiver.

Thank you for your consideration. If you have questions, please contact Lishaun Francis, Associate Director at the California Medical Association at lfrancis@cmanet.org or (916) 551-2554.

Sincerely,



Dustin Corcoran, CEO
California Medical Association



Del Morris, MD
President
California Academy of Family Physicians



John Kowalczyk, DO
President
Osteopathic Physicians & Surgeons of California

⁷ California State Auditor's Office: Medi-Cal Managed Care Plans – Provider Directories and Oversight. August 2014.

⁸ California State Auditor's Office: Medi-Cal Managed Care Plans – Provider Directories and Oversight. August 2014.

Kathy Kneer
President & CEO
Planned Parenthood Affiliates of California

Warren Fong, MD
President
Medical Oncology Association of
Southern California, Inc.

Stewart Ferry
Director of Public Policy
National Multiple Sclerosis Society

Bob Achermann, JD
Executive Director
California Association of Medical
Product Suppliers

Kelly Hardy
Senior Managing Director
Children Now

Anna Hasselblad
Interim Executive Director
California Coverage & Health Initiatives

Peter Manzo
President & CEO
United Ways of California

Mark Zakowski, MD
Chair, Legislative and Practice Affairs Division
California Society of Anesthesiologists

Tim Murphy, MD
President
California Psychiatric Association



Alex Johnson
Executive Director
Children's Defense Fund – California



José Luis González
Executive Director
Association of Northern California
Oncologists

Paul W. Rohrer, Esq.
CEO
Professional Pharmacy Alliance of California

Ross Elliott
Executive Director
California Ambulance Association

David Kieffer
Director of Government Relations
SEIU United Healthcare Workers – West

Mariana S-B Lamb, M.S.
Executive Director
Medical Oncology Association of Southern California, Inc.

Cc: Diana Dooley, Secretary, CA Health and Human Services Agency
Jennifer Kent, Director, CA Department of Health Care Services
David Sayen Regional Administrator, CMS San Francisco Regional Office
Francisco Silva, General Counsel, California Medical Association