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January 31, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 445–G
200 Independence Avenue, SW
Washington, DC 20201

Re: Medicaid; CMS Enforcement of State Compliance With Reporting and Federal Medicaid Renewal Requirements Under Section 1902(tt) of the Social Security Act (RIN 0938–AV26)

Dear Administrator Brooks-LaSure:

On behalf of the physician and medical student members of the American Medical Association (AMA), I appreciate the opportunity to offer our comments in response to the Centers for Medicare & Medicaid Services' (CMS) interim final rule with comment entitled, "Medicaid; CMS Enforcement of State Compliance With Reporting and Federal Medicaid Renewal Requirements Under Section 1902(tt) of the Social Security Act."

The AMA is a strong supporter of expanding access to coverage for all and recognizes that a critical piece of this mission is a robust Medicaid coverage framework. AMA policy expressly endorses several mechanisms to expand and sustain Medicaid coverage to all eligible recipients, including presumptive eligibility determinations and retroactive coverage to when an eligible person seeks medical care, investments in outreach and enrollment assistance, streamlined enrollment and renewal processes, 12-month continuous eligibility policies, and auto-enrollment. To ensure that individuals who have been properly determined to no longer be eligible for Medicaid have alternative options, we support state actions to facilitate coverage transitions, including automatic transitions, to new forms of coverage. While we understand there is a high degree of variability across states, we remain very concerned about regular reports of inappropriate disenrollments, failure to fully leverage the ex parte renewal process, and failure by states to report complete, transparent data. To help keep individuals covered during the unwinding, the AMA strongly supports:

- Strategies to reduce improper terminations from Medicaid and CHIP for procedural reasons, including automating renewal policies and following up with enrollees who have not responded to a renewal request, before terminating coverage;
- Responding to improper Medicaid and CHIP disenrollments by such means as requiring states to reinstate Medicaid coverage for individuals improperly terminated and pause disenrollments until the cause of the improper terminations has been mitigated;
- The provision of continuity of care protections to patients transitioning from Medicaid or CHIP to a new health plan that does not include their treating physicians and other providers in network, and recognize prior authorizations completed under the prior Medicaid/CHIP plan;

- Making Medicaid coverage status, including expiration of current coverage and information on pending renewals, accessible to physicians, clinics, and hospitals through the state's portal or by other readily accessible means; and
- Requiring states to track and make available key enrollment data on Medicaid/CHIP retention and disenrollment, successful transitions to new coverage, and numbers and rates of uninsured.

The AMA believes strong measurement, monitoring, and accountability measures are critical to ensuring the Medicaid program is sufficiently effective at maintaining its role as a safety net for the nation's most vulnerable populations. Accordingly, we strongly support many of the enforcement provisions included in this interim final rule, which will promote transparency, accountability, and state compliance with federal reporting requirements, and consequently, continuity of coverage for the thousands of Medicaid beneficiaries who depend on the program for affordable access to care.

In particular, we support the provision that stipulates if a state does not comply, CMS is authorized to require it to submit and implement a corrective plan and to require the state to suspend some or all disenrollments and/or implement monetary penalties and possibly even withhold payments until the state is in compliance. The AMA appreciates the progressive and proportional nature of these ramifications for noncompliance, as well as CMS' consideration of mitigating circumstances based on extraordinary circumstances and the level of harm caused and providing an opportunity for states to appeal. These measured, but stringent and clearly articulated, enforcement mechanisms will help to promote state compliance and continuous coverage of eligible beneficiaries. While we support the use of financial penalties as a means of enforcement, we urge CMS to consider and closely monitor for any potential adverse impacts on coverage and access to care when deploying monetary penalties or withholds.

In addition to the provisions in this rule, we urge CMS to consider requiring states to submit additional data, particularly as it relates to coverage of children, pregnant and post-partum women, dually eligible beneficiaries, and individuals living with disabilities. We have also found the myriad ex parte renewal flexibilities and waivers to be highly successful in expanding access to coverage while mitigating burden on practices and enrollees and encourage CMS to make these available to states on an ongoing basis, including after the unwinding ends.

In sum, the AMA strongly supports the policies finalized in this rule and commends the Administration for its ongoing efforts to help reduce losses or gaps in coverage for eligible beneficiaries through its myriad flexibilities and waivers, stakeholder outreach efforts, and educational resources. The AMA continues to offer our full support and collaboration to assist with these efforts however we can. If you have any questions about the content of this letter, please contact Margaret Garikes, Vice President, Federal Affairs, with any questions at margaret.garikes@ama-assn.org or 202-789-7409.

Sincerely,

James L. Madara, MD