

## Insights

### CMS Takes into Consideration the “Totality of the Circumstances” in Withdrawing its Far Reaching Medicaid Fiscal Accountability Rule

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On November 18, 2019, the Medicaid world was “rocked” when the Centers for Medicare and Medicaid Services (“CMS”) published a proposed rule titled **“Medicaid Fiscal Accountability Rule”** (“Proposed Rule”). While intending to strengthen the fiscal integrity and promote transparency of the Medicaid program, many argued that the Proposed Rule went too far, as it would have, among others: (i) revised the Medicaid financing requirements in a way that would severely limit States’ ability to finance and pay for the non-Federal share of Medicaid payments; (ii) added new complicated definitions and processes for calculating the upper payment limits (“UPL”); and (iii) otherwise created new restrictions and reporting requirements for all supplemental payments. The cumulative effect of these changes would have been to significantly undermine current Medicaid financing structures, including the elimination of the majority of fee-for-service supplemental payment programs and potentially limiting Indiana’s hospital assessment fee (“HAF”). However, as many critics pointed out, the actual effect of the Proposed Rule was seemingly impossible to anticipate because CMS caveated many of the proposed requirements to allow for their consideration of the “totality of the circumstances,” essentially reserving complete discretion for CMS to deny or approve any supplemental payment program based on factors not otherwise included in the regulation.

Whether it was the 4,231 **comments CMS received** in response to the Proposed Rule, the **letter from the National Association of Medicaid Directors** requesting CMS pause work on finalizing the Proposed Rule, or the worldwide **pandemic straining not only Medicaid Agency budgets across the country but also taxing state administrative staff and challenging providers’ ability to operate**, on September 14, 2020 CMS Administrator Seema Verma announced that CMS was withdrawing the Proposed Rule. Her announcement came in a **tweet** stating:

The proposed Medicaid Fiscal Accountability Rule (MFAR) was designed to increase transparency in Medicaid financing and ensure that taxpayer resources support the health care needs of our beneficiaries. We’ve listened closely to concerns that have been raised by our state and provider partners about potential unintended consequences of the proposed rule, which require further study. Therefore, CMS is withdrawing the rule from the regulatory agenda.



In a year of unprecedented challenges, the news of the withdraw is a welcome positive note for many providers as we look to close out 2020. For questions regarding Proposed Rule or Medicaid payments please contact **Meghan M. Linvill McNab**.