July 22, 2015

The Honorable Sylvia Mathews Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

RE: CMS 2390-P "Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, Medicaid and CHIP Comprehensive Quality Strategies, and Revisions Related to Third Party Liability"

The Medicaid and CHIP Payment and Access Commission (MACPAC) appreciates the opportunity to comment on the proposed rule from the Centers for Medicare & Medicaid Services (CMS) entitled "Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, Medicaid and CHIP Comprehensive Quality Strategies, and Revisions Related to Third Party Liability" (80 Federal Register 31097, June 1, 2015).

MACPAC is a non-partisan legislative branch agency that provides policy and data analysis and makes recommendations to Congress, the Secretary of Health and Human Services (HHS), and the states on a wide range of topics related to Medicaid and CHIP. The Commission is also charged with reviewing regulations that affect access, quality, or efficiency of health care for the Medicaid and CHIP populations.

The Commission supports the promulgation of the first comprehensive update to the regulation for Medicaid managed care in 13 years and encourages CMS to finalize the rules quickly. We believe that the overall framework and goals of the proposed rule, including alignment with other programs, increased transparency, and greater beneficiary protections, are important improvements to the current rules. The Commission recognizes the challenge in developing a regulatory framework of this scale and in our view, CMS has done a thoughtful job of balancing appropriate oversight expectations with opportunities for state and plan flexibility.

This proposed rule would modernize the Medicaid managed care regulations to reflect the significant changes in use of managed care in Medicaid over the past decade. The proposed rule would align the regulations governing Medicaid managed care with those of other major sources of coverage, implement statutory provisions, strengthen actuarial soundness payment provisions, and promote the quality of care and strengthen efforts

to reform delivery systems that serve Medicaid and CHIP beneficiaries. It would also ensure important beneficiary protections, enhance policies related to program integrity, and require states to establish comprehensive quality strategies for their Medicaid and CHIP programs. While the proposed rule addresses third party liability for trauma codes, this letter addresses only the provisions relating to managed care.

The proposed rule also adds important protections that address changes in the patient mix in Medicaid managed care since the previous rule was promulgated. Many states now require beneficiaries with complex health needs to enroll in managed care. As such, patient protections and quality controls that may have been sufficient for populations consisting largely of healthy adults and children may not adequately ensure that care is being delivered appropriately—and that plans are being paid accurately—for groups that are, on average, more disabled but with greater variations in need. The proposed rule addresses these differences by requiring that states use appropriate risk adjustment mechanisms in developing capitation rates, assess quality of care and whether access to appropriate care is provided, and have adequate enforcement mechanisms, including sufficient data to monitor health plans.

As a general principle, the Commission supports alignment of programs where possible to promote consistency across sources of coverage, streamline administration, and facilitate broader system reform objectives. We also applaud CMS's efforts to better link access, quality, and payment through the creation of new processes and outcome measures and the explicit consideration of quality and access goals in the evaluation of payment methods. Finally, the Commission has previously noted the longstanding challenges with the timeliness, consistency, and availability of Medicaid data and we strongly endorse CMS' efforts to improve transparency and the availability of data that this Commission and others use to evaluate the performance of Medicaid managed care programs.

As CMS evaluates the other comments it will receive in response to the proposed rule, MACPAC suggests that it consider the issues outlined below.

Importance of adequate resources for implementation and operations. As noted above, we encourage CMS to finalize the rule as soon as possible in order to provide clarity and consistency for states, plans, and beneficiaries. However, we also believe that it is important that implementation of the new rules be carefully staged and adequately resourced. While the proposed rule anticipates implementation timeframes for some provisions (e.g., medical loss ratio [MLR] reporting requirements), states and plans will require sufficient time to develop new procedures in response to many other aspects of the rule. Similarly, CMS will need to develop subregulatory guidance on many issues not fully detailed in regulation (e.g., elements to be included in the periodic audit of encounter and financial data).

Effective oversight of the new rules and ongoing compliance will also require state and federal staff with expertise in a variety of areas including statistics, actuarial science, data analysis, health plan functions, and program management. Both state and federal agencies will need time and resources to develop the requisite administrative capacity. Along these lines, we urge CMS to consider which of the new administrative burdens that would be imposed on states are necessary for improvement of access and quality as well as for responsible stewardship of public resources.

The effectiveness of the new regulations will depend upon the degree to which they are implemented fully and thoughtfully. However, as the Commission has noted in prior reports to Congress, administrative capacity constraints already hinder states' ability to take on precisely the types of activities envisioned by the proposed rule, including meeting changing program requirements; implementing proactive strategies to improve quality, outcomes, and value; and integrating Medicaid and CHIP into broader delivery system and financing reforms. We encourage CMS to leverage its resources to assist states in developing the capacity to effectively oversee their managed care programs in accordance with the new rules.

Medicaid-specific definitions in the calculation of medical loss ratios. The Commission supports alignment across programs, including a consistent, national method for calculating a medical loss ratio. We also acknowledge the complexities of this calculation and the differences between Medicaid and other coverage programs, and encourage CMS to carefully consider which aspects of the Medicaid managed care delivery system are sufficiently different from other programs as to require a Medicaid-specific definition or approach, even if at the expense of alignment and comparability across programs. For example, Medicaid covers enabling services, such as non-emergency transportation and translation services, which are not routinely covered by other programs. In addition, CMS should consider that, unlike the payments for Medicare Advantage and qualified health plans, states—not plans—are responsible for finalizing Medicaid capitation payments and plans do not have full control over the ability to smooth out losses through rate changes in subsequent years. CMS could consider allowing or requiring states that implement a minimum medical loss ratio and recoup funds from plans to incorporate a process to smooth plan performance over periods longer than one year (e.g., rolling multi-year MLR calculation, allow losses to offset gains in subsequent years) or share losses as well as gains in a given year.

The Commission recognizes the important role of Medicaid managed care and appreciates the challenge of developing a new rule that modernizes the managed care regulations while striking an appropriate balance between competing policy priorities. We commend CMS on developing a rule that strengthens and modernizes this significant delivery system and look forward to its implementation soon in order to provide clarity for states, plans, and beneficiaries. We appreciate the opportunity to provide comments on this proposed regulation.

Sincerely,

Diane Rowland, ScD
Chair

cc:
The Honorable Orrin G. Hatch, Chairman, Committee on Finance, U.S. Senate
The Honorable Ron Wyden, Ranking Member, Committee on Finance, U.S. Senate
The Honorable Fred Upton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives
The Honorable Frank Pallone Jr., Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives