

August 10, 2018

**DELIVERED ELECTRONICALLY**

The Honorable Seema Verma, Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-2413-P, P.O. Box 8016  
Baltimore, MD 21244-8016

**RE: CMS-2413-P: Medicaid Program; Reassignment of Medicaid Provider Claims**

Dear Ms. Verma:

We write to express our deep concern regarding the recent notice of proposed rulemaking (NPRM), CMS-2413-P concerning reassignment of Medicaid provider claims. As the Centers for Medicare and Medicaid Services (CMS) makes clear in its discussion, this proposal would prevent myriad independent home care workers from using their pay as they deem best meets their individual needs. In particular, the proposed rule would end their right to make deductions from their pay for many important purposes available to other workers, including for healthcare, training, and voluntary union membership. As organizations that work to advance access to quality health care for older adults and individuals with disabilities, including people with lower incomes, we object to this proposal as it will further diminish access to quality home care, which is already in decline.

Home care workers have joined together in unions to have a voice, receive better wages, and improve the services people with disabilities and older people receive. This, in turn, has helped raise the quantity and quality of home care available to people in need. Independent home care workers should have the same ability to join a union and make the same sort of voluntary deductions from their pay for things like healthcare and union dues that most other workers have. The proposal to prohibit these choices would negatively impact home care workers and the individuals who rely on them to provide essential personal care – care that is often necessary to maintain their independence at home.

The proposed rule would repeal a regulatory provision adopted in 2014 clarifying that state deductions for costs such as health care or other benefits typical of employment do not violate the Medicaid prohibition on reassignment of provider claims at 1902(a)(32) of the Social Security Act. In the discussion provisions of the rule, CMS makes it clear that it plans to apply that prohibition to independent home care worker deductions for union dues and other voluntary deductions from pay authorized by these providers. However, the Congressional concern originally addressed by the statutory reassignment provision was the practice of “factoring” – that is, the sale of Medicaid accounts receivable from, for example, a physician, to a third party who would then collect payment for the service provided, often submitting inflated claims. It is quite clear that the provision was never meant to apply to the sorts of deductions that all types of

workers customarily make from their pay.<sup>1</sup> In fact, since the mid-1990s, CMS has permitted this practice, after states first began to implement consumer directed programs and home care workers joined together in unions. The 2014 rule simply reinforced what was already law: affirming that independent provider pay deductions are not reassignments and fall outside the scope of the statute.

It is well known that the vast majority of elder Americans would prefer to age at home—indeed, polls show that 90% of people want to live in their own homes as long as possible, but will need support, including from home care worker, to do so.<sup>2</sup> This preference is a key reason why the proportion of total Medicaid spending on long-term services and supports devoted to Home and Community Based Services (HCBS) grew from a level of less than 10% to 25% by the late 1990s, and now represents more than half (53% in 2014) of Medicaid LTSS spending.<sup>3</sup>

Home care workers provide the majority of in-home care, including assistance with bathing and toileting, meal preparation and feeding, as well as some health-related tasks—intimate, high-touch, and demanding work. It is no exaggeration to say that without home care workers, there is no access to these services. Moreover, as the health system moves increasingly towards delivery models that aim to coordinate care across a variety of providers, often using an integrated, multi-provider care team, meeting the need for HCBS will require a supply of workers who are not just available, but also have the skills and capacity to play a role in the care coordination process.<sup>4</sup>

A key challenge in ensuring access to care for older people is the poor quality of home care jobs. It is no secret that there is a shortage of home care workers—the vast majority of states have already reported "serious" or "very serious" shortages in the home care workforce generally,<sup>5</sup> and the shortage of workers has affected Medicaid HCBS programs as well as the broader market for some time. If anything, the need for workers has grown more acute in recent years, due to demographic shifts—the total number of people in need of long-term care services is expected to grow to 27 million by 2050, while the number of women aged 25 to 54, who form the core of the workforce, will only increase slightly. A 2008 Institute of Medicine (IOM) report found that “a major factor in the deficit of direct care workers is the poor quality of these types of jobs,” noting that “much more needs to be done to enhance to the quality of these jobs” in order to create an effective workforce.<sup>6</sup> The IOM report identified a number of issues that contribute to this poor job quality, including low salaries, lack of benefits, high levels of physical and emotional stress, and job-related injuries.

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<sup>1</sup> S. Rep. 982-1280 at 204-205 (1972).

<sup>2</sup> Associated Press-NORC Center for Public Research. 2013. *Long Term Care: Perceptions Experiences and Attitudes among Americans 40 or Older*. An estimated 7 of 10 Americans over age 65 will need at least 3 years of long term services and supports. AARP Public Policy Institute, [Medicaid: A Program of Last Resort for People Who Need Long-Term Services and Supports](#). May 2013.

<sup>3</sup> Wenzlow et al., *Improving the Balance: The Evolution of Medicaid Expenditures for Long-Term Services and Supports (LTSS), FY 1981-2014*, June 3, 2016.

<sup>4</sup> Commission on Long-Term Care, *Final Report to Congress*, September 2013 pp. 35-37. See also Robert Espinoza, “The Changing Policy Landscape of the Direct Care Workforce”, *Public Policy & Aging Report*, Volume 27, Issue 3, 1 August 2017, Pages 101–105; and Eldercare Workforce Alliance, *Advanced Direct Care Worker: A role to Improve Quality and Efficiency of Care for Older Adults and Strengthen Career Ladders for Home Care Workers*, September 2014.

<sup>5</sup> PHI and Direct Care Workers Association of North Carolina, “The 2007 National Survey of State Initiatives on the Direct-Care Workforce” (December, 2009), p.2.

<sup>6</sup> Institute of Medicine, “Retooling for an Aging America” (2008), pp. 200-01.

Unions have played an important role in helping address these serious workforce issues by raising wages and winning benefits such as health care through collective bargaining. For example, one 2005 study that examined the effect of wage increases for 18,000 home care workers in San Francisco from 1996-2002 (after workers won substantial wage increases through their union), found a significant decrease in home care worker turnover.<sup>7</sup> Home care worker unions have also provided opportunities for workers to receive training and to have a voice in decisions that affect them and the people they serve, increasing the quality of care available for older people and people with disabilities. Through their unions home care workers have joined with other advocates to win increases in Medicaid funding and expand eligibility for HCBS programs. By eliminating the ability of workers to contribute to a union or pay for health care and other benefits through payroll deductions, the NPRM threatens both the gains workers have made and the stability of HCBS programs.

Finally, we note our concern about the process underlying this NPRM. CMS provided no justification for the truncated, 30-day comment period, rather than the standard 60-day period that is meant to provide a meaningful opportunity for all stakeholders to comment. Furthermore, while CMS claims that the proposal would be economically significant, the agency also states that it does not have sufficient data to either support such a claim or conduct the analysis required to determine if such a statement is true. This is not an acceptable basis for the proposed rule that will have a major impact on the access to quality care for older and disabled people and the quality of life of the essential home care workforce that provides that care.

For all these reasons, we urge the Centers for Medicare & Medicaid Services to rescind this proposed rule.

Sincerely,

Alliance for Retired Americans  
American Foundation for the Blind  
Caring Across Generations  
Center for Medicare Advocacy  
ElevatingHOME  
Families USA  
Justice in Aging  
Medicare Rights Center  
National Association of Social Workers  
National Committee to Preserve Social Security and Medicare  
National Consumer Voice for Quality Long-Term Care  
Visiting Nurses Association of America (VNAA)  
Women's Institute for a Secure Retirement (WISER)

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<sup>7</sup> Howes, C, "Living Wages and Retention of Homecare Workers in San Francisco," *Industrial Relations: A Journal of Economy and Society*, 44: 139-163.