



State of California  
Office of the Attorney General

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ATTORNEY GENERAL

July 23, 2018

The Honorable Alex Azar II  
Secretary  
U.S. Department of Health & Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue SW  
Washington, DC 20201

RE: "Medicaid Program; Reassignment of Medicaid Provider Claims," file code CMS-2413-P

Dear Secretary Azar:

On July 10, 2018, the U.S. Department of Health and Human Services (HHS) issued a proposed rule, "Medicaid Program; Reassignment of Medicaid Provider Claims" ("Rule"), which seeks to alter how states make payments for employee benefits such as health insurance and job training. In California there are 400,000 home health care workers who are eligible to receive such benefits and work in the state's In-Home Supportive Services program, which provides care for more than 500,000 individuals with disabilities. Yet, HHS irresponsibly issued this Rule without any data that justifies the need for this Rule in the first place or its impacts on home care workers, beneficiaries, or States. This uncertainty and the illusory need for the Rule is made worse by the fact that HHS set a shorter than usual public comment period. I urge the Department to withdraw the Rule immediately. If the Rule is not withdrawn, I ask that the period for public comment on the Rule be extended from 30 days to the standard 60 days.

As the Attorney General of California, I have a constitutional duty to protect all 40 million Californians by safeguarding their health and safety, and defending the State's laws. Cal. Const., art. V, § 13. California law authorizes collective bargaining of home care workers, who are hired by individuals with disabilities to provide personal care services, such as bathing, feeding, dressing, and transportation. The Rule seeks to impair California's ability to directly deduct payments for collectively bargained-for benefits, such as healthcare coverage or authorized union dues. The Rule is an attempt to intrude upon state sovereignty and deny Californians their collective bargaining rights.

My serious concerns about this Rule are compounded by the agency's lack of information to support it. The Rule is primarily based on a purported need to "eliminate a state's ability to

divert Medicaid payments away from providers,” yet it contains no data suggesting that Medicaid payments are being inappropriately diverted. **As the Rule itself acknowledges, its economic impact is unknown. The Rule states the following:**

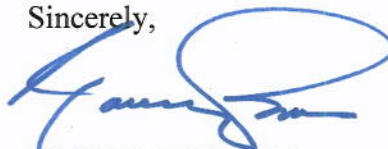
- HHS “lack[s] information with which to quantify the potential impacts of this policy” on payments.
- HHS has not “quantified the amount of other authorized reassignments, such as health insurance, skills training, or other benefits.”
- HHS “is unable to quantify these direct financial impacts.”
- HHS “lacks information to reliably estimate the proportion of homecare providers likely to stop making payments.”<sup>1</sup>

As HHS admits, it has not conducted an economic analysis. The absence of data makes very clear that HHS lacks sufficient information to fully understand the impacts of the Rule on States, beneficiaries, or home care workers. Further, it demonstrates that there is no basis for HHS to change existing regulations. This is irresponsible and an abuse of the regulatory review process.

Disappointingly, HHS issued the regulation on a truncated review schedule, giving the public only 30 days to comment. When this Rule was last changed in 2014 under the previous Administration, the public was given 60 days to comment. While the Administrative Procedure Act requires a minimum of 30 days for public comment during rulemaking (5 U.S.C. 553(d)), the more standard 60-day period in this instance is needed in order to allow affected parties to weigh in and provide information to HHS on the many aspects where the agency says that it lacks information. Furthermore, when a rule is economically significant, which HHS is unable to confirm or deny here, the formal recommendation of the U.S. Administrative Conference is a 60-day comment period.<sup>2</sup> For this Rule, a 60-day comment period is appropriate, especially since HHS is uncertain of its economic significance.

I therefore urge HHS to withdraw the Rule immediately. In the event that HHS continues with the current, unjustified Rule, it should extend the comment period from 30 days to 60 days to allow for the submission of detailed and thorough public comments.

Sincerely,



XAVIER BECERRA

<sup>1</sup> 83 Fed. Reg. 32254 (July 12, 2018).

<sup>2</sup> Administrative Conference of the United States, Administrative Conference Recommendation 2011-2, June 16, 2011. Available at <https://www.acus.gov/sites/default/files/documents/Recommendation%202011-2%20%28Rulemaking%20Comments%29.pdf>.

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July 18, 2018  
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Cc: The Honorable Seema Verma  
Administrator