



January 5, 2022

Mr. John Giles
Director, Division of Managed Care Policy
Center for Medicaid and CHIP Services
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Re: Follow-up from 4Q2021 CMCS-MHPA Quarterly Call

Dear Mr. Giles:

On behalf of the Medicaid Health Plans of America (MHPA), I would like to thank you and your colleagues from the Centers for Medicare and Medicaid Services (CMS)/Center for Medicaid and CHIP Services (CMCS) for an informative and productive CMCS-MHPA quarterly call on November 18th, 2021. We appreciate the opportunity to discuss issues that impact Medicaid beneficiaries, Medicaid managed care organizations (MCOs), and the Medicaid program that most recently included Medicaid eligibility redeterminations and state preparation for the unwinding of the COVID-19 public health emergency (PHE). We were pleased to see a number of these issues included in your recent publication, *Strategies States and the U.S. Territories Can Adopt to Maintain Coverage of Eligible Individuals as They Return to Normal Operations*. We stand ready to work with CMS as a resource and partner to identify and implement best practices that ensure that individuals retain health coverage as the PHE comes to a close.

1115 Risk Mitigation Demonstration – Request for Clarification

We would like to follow up on the CMCS-MHPA fourth quarterly call discussion on the State 1115 Risk Mitigation Demonstration opportunity that provides retroactive risk mitigation related to the PHE. Thank you for the robust discussion and your clarification that this demonstration will be limited to states with pending retroactive risk mitigation requests that did not meet the deadline set by the final Medicaid managed care rule. We also appreciated hearing that CMS plans to retain existing rulemaking on retroactive arrangements. We agree with CMS that risk sharing mechanisms between states and plans should be prospective in nature to stabilize programs and protect access to care and longer-term investments.

While we greatly appreciate these clarifications, we still have a few questions related to certain elements of the 1115 Risk Mitigation Demonstration. As states, providers, and plans navigate the uncertainty of this unprecedented pandemic, we believe these additional

clarifications are essential to enabling stakeholders to be productive partners in the operationalization of these 1115 Risk Mitigation Demonstration opportunities.

Specifically, we note that CMS estimates that the 1115 Risk Mitigation Demonstration would apply to at least 25 states that did not have their managed care contracts approved by December 14, 2020 (December 31, 2020 for 2021 requests) – when the prohibition on retroactive risk mitigation went into effect. We believe it is critical to understand which states this applies to so that any managed care plan operating in those states can address any potential revenue recognition risk that they may not be aware of. As such, we would appreciate if CMS would respond to the following questions:

- *Scope.* Could CMS confirm that this demonstration will be limited to states unable to meet those deadlines and unavailable to other states for periods that have already ended?
- *State information.* Could CMS provide the list of states, time periods, and risk mitigation type (e.g. risk corridor, minimum MLR) and brief description of the program (e.g., MLR centered risk corridor with no exchange of money within +/-3%, and 50%/50% sharing of losses/gains outside of the 3%)? This list will provide an opportunity for our member plans' to compare to their lists, to ensure there are no new or changed programs being proposed.

1115 Risk Mitigation Demonstration - Guardrails

As CMS and the 1115 Federal Review Team evaluates these Demonstration requests, we wanted to share some potential guardrails for your consideration:

- ***Alignment with CMS' intent of the waiver.*** As noted above, the proposed retroactive risk mitigation should not be a new request, nor should it be different than what the state proposed prior to the December 14, 2020 deadline.
 - The State Agency should provide sufficient documentation that MCOs were made aware of the retroactive risk mitigation program prior to December 14, 2020 and had opportunity to provide feedback.
- ***Compliance with Actuarial Principles and Practices.*** In accordance with 42 CFR 438.6, the proposed risk mitigation mechanisms should **comply with generally accepted actuarial principles and practices**, as well as Actuarial Standard of Practice (ASOP) No. 49. Further, so that these mechanisms are fair to all parties (states, CMS, and MCOs) we recommend the following:
 - The risk mitigation period (i.e., the months over which the risk mitigation mechanism is applicable) should not be overly broad and should not apply to time periods well before (e.g., 2019) the announcement of the PHE.
 - Likewise, the risk mitigation period should not be overly narrow, only including months that lead to substantial payments from MCOs to states without considering other months during the PHE when MCOs could have experienced losses.

- Similar to the rate development standards, states need to consider the tax status of their MCOs when designing the risk mitigation parameters, as required by 42 CFR 485.5(e).
- Risk corridors should be symmetrical around the state's projection of MLR (or expense), that was determined at the time the rates were filed (and not a higher level) to ensure equal treatment with respect to sharing of gains and losses.

We are grateful that CMS provides the final review and determination as to whether these risk mitigation programs are actuarially sound and fair to all parties, especially given the complexities when they are implemented mid-rating period or after the rating period. Diligent reviews will help ensure member access, minimize provider disruption, and stabilize programs.

We would greatly appreciate responses to our requests for clarity as soon as possible to fully implement and account for these programmatic changes.

Once again, we would like to thank CMCS for taking the time to engage in these thoughtful discussions with our members. We look forward to connecting with you on the first quarterly call of 2022 on February 17th at 3pm EST. Should you have any questions in the meantime, please feel free to reach out to me directly via email at sattanasio@mhpa.org.

Sincerely,

/s/

Shannon Attanasio
Vice President, Government Relations and Advocacy
Medicaid Health Plans of America