Statement

of the

Medicaid Health Plans of America

for the

Committee on Energy and Commerce

Subcommittee on Health

of the

U.S. House of Representatives

"Legislative Proposals to Increase Medicaid Access and Improve Program Integrity"

April 30th, 2024

Chairman Guthrie, Ranking Member Eshoo, and Members of the Subcommittee:

On behalf of the 152 managed care organizations (MCOs) serving more than 51 million Medicaid beneficiaries in 40 states, the District of Columbia and Puerto Rico, the Medicaid Health Plans of America (MHPA) appreciates the opportunity to provide the MCO perspective on access and program integrity in Medicaid. MHPA is pleased to see the subcommittee's prioritization of several key programs in Medicaid, and we look forward to working with the subcommittee toward ensuring Medicaid best meets the needs of the millions of Americans that rely on the program for life-saving coverage and care.

MHPA applauds the inclusion of bipartisan policy strengthening Medicaid Home and Community Based Services (HCBS) and permanent funding for the Money Follows the Person Program as it demonstrates the subcommittee's acknowledgement of the essential role long-term services and supports, and HCBS in particular, play in the lives of millions of Medicaid enrollees. MHPA commends the subcommittee for these efforts and stands ready to work together to advance these shared priorities.

MHPA is, however, disappointed with the inclusion of policy (H.R. 8115) that unnecessarily duplicates the already existing ability of states to withhold payments for certain services for perceived violations by MCOs. All plans share a commitment to ensuring MCOs are playing by the rules and comply to both state and federal program requirements and contractual obligations. This policy fundamentally undermines the state's role within the Medicaid program, provides unchecked power to the federal government, and could have unintended negative implications to Medicaid program integrity.

The Medicaid managed care partial disallowance policy before the subcommittee is a solution in search of a problem and represents overreach from the federal government into what has historically been a state's responsibility. State's already have a broad set of enforcement mechanisms (Appendix A), including withholding MCO payment, imposing corrective action plans, and a wide array of additional intermediate sanctions, to ensure MCOs are compliant with both state and federal Medicaid managed care

requirements; this policy cedes significant authority to CMS thereby diluting the important role of the state in managing its program. Empowered with the tools currently at their disposal, states are in the best position to oversee their Medicaid programs.

Providing this unchecked authority to the Administration would also have unintended consequences, including creating the opportunity for politically motivated overreach when the federal government differs with a state's approach to running their Medicaid program. By providing CMS the power to unilaterally impose financial penalties on managed care plans this policy creates an additional avenue for political interference into a state's approach to running their Medicaid program.

Finally, the partial disallowance policy before the committee threatens the financial solvency of MCOs and could have an unintended impact on Medicaid program integrity. Disallowing FFP for targeted services is inconsistent with a comprehensive full risk managed care contract and would affect the certification of actuarially sound capitation rates, which must be set prospectively to ensure that MCOs have the resources to meet the needs of their members. Actuarially sound rates represent the bedrock to ensuring high value, quality care for the state's entire Medicaid population, undermining this core facet of the Medicaid managed care delivery system threatens to diminish an MCOs ability to provide life-saving coverage and care.

Again, MHPA reiterates our commitment to working with the subcommittee on many of the priorities before you today, including policies that strengthen essential programs like Money Follows the Person. While we stand in strong opposition to the Medicaid managed care partial disallowance policy, we appreciate the opportunity to provide our perspective. Thank you again for your work to ensure Medicaid best meets the needs of the millions of Americans that rely on the program for life-saving coverage and care. If you have any questions, please do not hesitate to contact me at sattanasio@mhpa.org.

Sincerely,

/s/

Shannon Attanasio
Senior Vice President, Government Relations, Policy & Advocacy

APPENDIX A

State and Federal Enforcement Mechanisms in Medicaid Managed Care

State Enforcement Mechanisms

- **Quality Withhold (State MCO Contract Language)**
  - States may withhold a portion of MCO capitation and release it fully or in part to the MCO depending on MCO performance regarding the quality outcomes outlined in the contract.
- **Corrective Action Plans (State MCO Contract Language[1])**
  - States may impose a corrective action plan on an MCO for noncompliance with the contract.
- **Intermediate Sanctions (42 CFR 702):**
  - A state may impose intermediate sanctions if the state determines that an MCO is not in compliance with any part of 42 CFR 438.700. These intermediate sanctions may include:
    - Civil Monetary Penalties
    - Appointment of temporary management of an MCO.
    - Granting enrollees the right to terminate enrollment without cause.
    - Suspension of new enrollment, including default enrollment, in the MCO.
    - Suspension of payment for beneficiaries enrolled after the effective date of the sanction and until CMS or the state is satisfied the MCO is in compliance and likely to remain in compliance.
- **Liquidated Damages (State MCO Contract Language)**
  - States may impose liquidated damages on an MCO for noncompliance with the contract.
- **States may also impart additional state-specific sanctions based on MCO noncompliance/violation of that State's statutes or regulations. (42 CFR 438.702 and State Statute)**
- **Termination of the MCO's contract. (State MCO Contract Language)**
  - A state may terminate an MCO's contract if certain conditions are met as outlined in the contract.
- **Termination of the MCO's license to operate in the State. (State MCO Contract Language)**
- **Medical Loss Ratio (MLR) Remittance (42 CFR 438.8)**
  - If an MCO does not meet MLR requirements, the MCO may be required to submit a remittance to the state.

(CONTINUED ON NEXT PAGE: CMS Enforcement Mechanisms)

[1] The States are required to take corrective action under federal regulations, however, language is found in the state MCO contract outlining when corrective action will happen.

CMS Enforcement Mechanisms

- **Corrective Action Plan**[2]
  - For states that are not in compliance with federal rules and regulations, CMS may require a corrective action plan be put in place to bring the state back into compliance. This includes when states are not in compliance with regulations regarding managed care.
- **Withhold of Federal Financial Participation (42 CFR 438.802)**
  - CMS may withhold payment to the State due to either noncompliance of the State plan, or noncompliance by the State regarding Federal requirements.
  - States are unable to claim FFP for MCO contracts that are not approved by CMS. (42 CFR 438.806)
- **Suspension or non-renewal of a demonstration or waiver. (Boilerplate Special Terms and Conditions)**
  - If a state's managed care program is authorized by a waiver or demonstration under Sections 1915 or 1115 of the Act, CMS may suspend or not allow the state to renew the waiver or demonstration.
- **MCO Sanctions – CMS Special Rules (42 CFR 438.730)**
  - States may recommend that CMS impose the denial of payment sanction on an MCO contract.
- **OIG (42 CFR 438.730(g))**
  - CMS will forward any notice of a sanction against an MCO to OIG for consideration of possible imposition of civil monetary penalties. These penalties may be in addition to, or in place of, sanctions imposed by CMS.

[2] Corrective action plans are discussed in multiple parts of federal regulations, discussing a state's responsibility to take corrective action, or for CMS to take corrective action against the state. Language is also found in waiver and demonstration documents.