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January 31, 2020

VIA ELECTRONIC SUBMISSION

Seema Verma, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244-1859

RE: CMS-2392-P, Medicaid Program: Medicaid Fiscal Accountability Regulation (Vol. 84, No. 222), November 18, 2019

Dear Administrator Verma:

On behalf of the Conference of Boston Teaching Hospitals (COBTH), I write to express my serious concerns about the Medicaid Fiscal Accountability Regulation that was recently proposed by the Centers for Medicare & Medicaid Services (CMS) and to urge the agency to withdraw this proposed regulation in its entirety, including all preamble commentary imposing regulatory standards that have not gone through notice and comment rulemaking.

COBTH is an organization of twelve Boston-area teaching hospitals that works to advance policies critical to the core mission of academic medical centers: providing needed, high quality patient care to all, regardless of insurance status or ability to pay; training the next generation of physicians, nurses and allied health professionals; advancing innovation and discovery through biomedical research; and serving our surrounding neighborhoods and communities. In total, COBTH hospitals provided nearly 1.8 million Medicaid outpatients visits last year, and are deeply committed to serving our most vulnerable and lower income patients who receive health coverage and services through the Commonwealth's Medicaid program, MassHealth. Because the proposed rule would result in substantial cuts to the Medicaid program, jeopardizing provider reimbursement and patient access to health care services, we strongly urge the agency to withdraw the proposed regulation.

As proposed, the Medicaid Fiscal Accountability Regulation would restrict state access to important funding streams, limit the use of supplemental payments, and introduce unacceptable uncertainty with respect to how CMS will evaluate how states finance their share of Medicaid spending. According to an analysis by Manatt, the proposed rule will have a devastating financial impact on the Medicaid program, resulting in up to a \$49 billion annual reduction in Medicaid spending nationwide, and up to a \$31 billion reduction in payments to hospitals across the United States. A financial cut of this size could force Massachusetts and other states to restrict eligibility, benefits, and/or provider reimbursement under their Medicaid programs. MassHealth is a critical component of Massachusetts' health care safety net, and

rollbacks in any of these areas could have seriously harmful consequences for the Commonwealth's most vulnerable residents. Specifically, MassHealth currently provides coverage to over 1.8 million people in Massachusetts, including 40 percent of the Commonwealth's children and 60 percent of its residents with disabilities.

Additionally, we are deeply concerned that CMS has put forward this proposed rule without conducting a meaningful analysis of its impact on states, health care providers, or Medicaid beneficiaries. It is CMS's obligation to complete a Regulatory Impact Analysis of the proposal, and the superficial estimates included in the regulation do not meet the requirements established by the Office of Information and Regulatory Affairs. Failing to include a comprehensive analysis of the rule's potential economic and health care access impact is deeply concerning and is reason enough to withdraw the proposed rule.

While we understand CMS's goal of improving the Medicaid program through increased transparency, the proposed Medicaid Fiscal Accountability Regulation would not achieve that goal. Rather, the rule proposes significant and unprecedented changes and restrictions to Medicaid financing, including health care related taxes and provider donations, intergovernmental transfers, certified public expenditures, and supplemental payments. The proposed rule exceeds CMS's statutory authority and gives broad new discretion to CMS via indefinite, vague standards to assess states' methods for financing their share of the Medicaid program. Assessing state policies based on the "undue burden," "net effect," and "totality of circumstances" related to a financing arrangement, without prescribing the criteria for making those assessments, creates unacceptable uncertainty for state Medicaid programs.

These new standards will make the agency's decision-making processes less transparent. The rule creates considerable uncertainty, risks, and restrictions to Medicaid financing in a manner that is untenable for complex state Medicaid programs like MassHealth, which need certainty to effectively design and operate their programs. Additionally, requiring states to have these arrangements approved every three years, even if no changes are made, is unnecessarily burdensome. Further, the proposal fails to account for the five-year timeframe of 1115 waivers, which intersect with payment and financing mechanisms that would be governed by the three-year cycle proposed in this rule.

We are also troubled by the significant administrative burden that would be placed on state Medicaid programs if the rule is finalized as written. The rule prescribes several burdensome reporting requirements on states that would seemingly provide little to no benefit to the agency's oversight of the Medicaid program. Onerous reporting requirements mean diverting scarce resources in order to achieve compliance, and we urge the agency to withdraw them.

It is also concerning that the agency proposes to finalize most of these new requirements immediately, without providing adequate time for states to come into compliance with the regulation. If finalized, this rule could require serious reconsideration of state financing and accounting arrangements, which would be exceptionally challenging to change overnight. We urge the agency to allow ample time for states to comply with any significant rule changes, but especially proposals as integral to the operation of a state Medicaid program as this one.

Based on the severe negative effects that the rule would have on MassHealth, health care providers, and most importantly, the patients we are privileged to serve through the MassHealth program, we strongly

urge the agency to withdraw this proposed rule in its entirety. Medicaid is an essential part of Massachusetts' health care delivery system, and ensures that millions of Massachusetts residents can get the health care services they need. Those services include the care provided to our most vulnerable and clinically complex patients at Greater Boston's world-renowned academic medical centers and teaching hospital systems, which provide the highest quality care to their patients and comprise a collective and critical safety net for patients served through the MassHealth program.

We appreciate your consideration of these comments and welcome the opportunity to discuss these in greater detail or provide any additional information that may be helpful. We look forward to continuing to work with you to strengthen the Medicaid program and ensure continued quality, dignity, and access to affordable health care for our Commonwealth and our nation's most vulnerable residents.

Very truly yours,

A handwritten signature in blue ink that reads "Patricia McMullin". The signature is written in a cursive style with a large initial "P".

Patricia McMullin
Executive Director