



March 8, 2024

Chiquita Brooks-LaSure, Administrator
The Center for Medicare and Medicaid
Services 7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Brooks-LaSure,

On behalf of our state members, we are reaching out to urge you to act immediately to institute public health emergency-like flexibilities to ensure access to Medicaid services following the massive Change Healthcare cyberattack.

Millions of Americans across the age continuum who have complex medical needs, disabilities, serious mental illness and substance use disorder will likely face barriers to receiving critical services if U.S. Department of Health & Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) do not act immediately to provide state and territory Medicaid programs with necessary flexibilities.

The February 21, 2024 cyberattack on Change Healthcare, a unit of UnitedHealth Group, has had severe and reverberating effects for Medicaid recipients, providers, and the Medicaid programs that are paying for those services. The attack has resulted in the need to pull down systems that process claims and prescription drug authorization for thousands of providers, including Medicaid behavioral health and home and community-based services (HCBS) providers.

Because of the shut-down of Change Healthcare systems, providers across the country are facing interruption in the payments they rely on to operate and serve Medicaid recipients. This includes behavioral health and HCBS providers who serve a large number of Medicaid recipients and are at particular risk of having to halt service delivery because of their thin operating margins. These provider constraints threaten access to care and risk exacerbating existing disparities.

States are doing everything they can to respond to this emergency, including: standing down on prior authorization requirements and directing pharmacies to provide emergency refills and 30-day supplies of medication; connecting at-risk individuals to one-on-one care management support; in states that use these arrangements, requesting that their

managed care organizations (MCOs) make advance payments to providers; and supporting providers in moving to different payment clearinghouses. However, this situation is causing concern for Medicaid programs related to their stewardship responsibilities, as **states and territories do not have the financial capacity to pay providers exclusively out of state funds for any length of time.** Specifically, programs are worried about their inability to document payment for services for which they are financially accountable to the federal government and taxpayers. This is especially urgent for states that have fee-for-service program structures and cannot channel payments through MCOs.

While we understand that the federal statutory definition of public health emergency does not contemplate a cyberattack, **on behalf of our members we urge U.S. HHS and CMS to immediately institute public health emergency-like flexibilities for Medicaid programs.**

Specifically:

- **States need flexible authority from HHS and CMS to make retainer payments that qualify for federal match, can be instituted immediately and are made with recognition of the difficulty of documenting services in the near term. This approach was used during the COVID-19 public health emergency and was especially effective and helpful for states.**
- **States need flexibility to waive utilization management practices and co-payments that are embedded in their state plans.**
- **States need assurances that federal audit agencies will consider the context of this urgent set of circumstances and hold programs harmless from typical documentation requirements.**

NASDDDS, NASMHPD, ADVancing States and our members would deeply appreciate HHS and CMS's immediate attention to this request. It is a certainty that we will see more of these types of attacks in the future. A robust response now will help establish structure and certainty for the future, and will support states and territories as they move forward on behalf of the millions who rely on Medicaid services.

Sincerely,



Martha A. Roherty
Executive Director
ADvancing States



Mary P. Sowers
Executive Director
National Association of State
Directors of Developmental
Disabilities Services



Brian Hepburn
Executive Director
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