

January 31, 2020

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-2393-P  
P.O. Box 8016  
Baltimore, MD 21244-8016

*Submitted electronically via regulations.gov*

Re: CMS-2393-P: Medicaid Program; Medicaid Fiscal Accountability Regulation

Dear Friends,

The Massachusetts Law Reform Institute (MLRI) submits these comments in opposition to this proposed rule. MLRI is a non-profit state-wide poverty law and policy center in the state of Massachusetts dedicated to advancing laws, policies, and practices that secure economic, racial, and social justice for low-income people and communities. For decades, MLRI has represented the interests of Massachusetts' low income residents who rely on the Medicaid program for access to health care services.

Today, the Massachusetts Medicaid program, MassHealth, provides access to vital health care services for approximately 1.8 million children and parents, individuals with disabilities, the elderly and other low income adults. It also sustains a robust system of safety net health care providers. Massachusetts boasts the highest rate of insurance coverage of any state in the nation in no small part thanks to its Medicaid program.

The proposed rule jeopardizes the continued success of the MassHealth program by unreasonably restricting the ways in which Massachusetts can raise revenues to cover the non-federal share of costs. With reduced revenue sources for the non-federal share, Massachusetts may be forced to make cuts to eligibility, benefits or provider rates, which will undermine the effectiveness of the program and thwart its purpose. For these reasons, we oppose the proposed rule in its entirety.

The proposed rule would make a number of highly technical policy changes that could prohibit or limit ways that states finance their share of Medicaid expenditures or provide supplemental payments to providers. The proposed rule would also establish discretionary standards of review for states' Medicaid financing arrangements and supplemental payments that would create uncertainty about what is allowable. Adding to this uncertainty is the proposal that all existing provider tax waivers and supplemental payment arrangements be limited to a three-year duration. In states like Massachusetts that operate comprehensive 1115 demonstrations with a five-year duration, the restrictions, uncertainty, and three-year limitation all contribute to undermining the

ability of the state to continue developing innovative approaches to providing high quality, cost effective care to those in need and supporting essential community providers.

CMS acknowledges in the preamble to the proposed rule that “[t]he fiscal impact of the Medicaid program from the implementation of the policies in the proposed rule is unknown.” Medicaid is too important a program for this drastic step into the unknown. In Massachusetts, 60% of the MassHealth population is comprised of children, older adults and people with disabilities.<sup>1</sup> MassHealth is a significant source of revenue for health care providers: Nursing homes and community health centers receive over half of total patient revenue from MassHealth.<sup>2</sup> CMS should not up-end long standing financing mechanisms in common use in Massachusetts and other states without far more thorough analysis of the costs and consequences than it has undertaken to date.

For all these reasons, MLRI respectfully urges you to withdraw this proposed rule in its entirety.

Sincerely,



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Massachusetts Law Reform Institute  
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<sup>1</sup> Commonwealth Medicine, U. Mass. Medical School, MassHealth the Basics: Facts and Trends, update July 2019, available at <https://www.bluecrossmafoundation.org/publication/masshealth-basics-%E2%80%93-facts-and-trends-july-2019>

<sup>2</sup> MassHealth the Basics, *supra*.