



Medicaid Fiscal Accountability Regulation Tennessee Hospital Association Concerns on the Proposed Rule

On November 12, 2019, the Centers for Medicare and Medicaid Services (CMS) released the Medicaid Fiscal Accountability Regulation (MFAR) with the stated purpose of strengthening the fiscal integrity of the Medicaid program and increasing transparency around state supplemental payments and financing mechanisms.

Unfortunately, the MFAR is not simply a transparency and accountability initiative, as it would severely restrict states' ability to fund their required share of Medicaid expenses. In Tennessee, the MFAR represents a threat to the foundations of the TennCare program, a program that was the first of its kind and has been successful for decades in saving the federal government billions of dollars.

On behalf of our more than 140 hospital and health system members, the Tennessee Hospital Association (THA) submitted formal comments to CMS regarding the proposed rule on January 31, 2020 and has been working with state and federal officials to raise concerns about the sweeping impact of the MFAR. THA is asking CMS to withdraw the proposed rule in its entirety.

Tennessee hospitals are deeply concerned by numerous aspects of the MFAR, including:

- The MFAR circumvents Congress to upend the state-federal partnership and financing structure designed by Congress, stripping states of flexibility to fund the non-federal share of Medicaid using local sources. The proposed rule leaves states nowhere to turn but state and local taxpayers to maintain their existing Medicaid programs.
- The MFAR adopts vague and sweeping regulatory criteria that will give CMS essentially unlimited authority to deem state financing practices impermissible, making it impossible for the TennCare program and its providers to structure their affairs in certain compliance with the law. In Tennessee alone, these provisions would jeopardize over \$1 billion in non-federal share funding and \$3.8 billion in total Medicaid funding, nearly one-third of the TennCare program's total budget.
- The MFAR will lead to benefit and reimbursement cuts that undermine the economy, efficiency, and quality of care furnished to TennCare beneficiaries, and will hinder access, dismantling decades of progress made under the state's CMS-approved TennCare waiver.
- CMS' impact analysis for the MFAR is wholly inadequate. It fails to account for significant harms that the MFAR will cause and provides woefully incomplete estimates of financial impact. The American Hospital Association estimates the Medicaid program could face total funding reductions between \$37 billion and \$49 billion annually or 5.8% to 7.6% of total program spending as a result of MFAR.
- The MFAR fails to satisfy basic tenets of federal administrative law, which require agencies not to act in an arbitrary or capricious manner, not to abuse their discretion, and to provide a reasoned explanation and rational basis for their policies.