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August 13, 2018

Seema Verma, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2413-P
P.O. Box 8016
Baltimore, MD 21244-8016

Re: CMS-2413-P

Dear Administrator Verma:

On behalf of the National Association of States United for Aging and Disabilities (NASUAD), I am submitting comments on the recently proposed regulation entitled Reassignment of Medicaid Provider Claims (CMS-2413-P). NASUAD represents the 56 officially designated state and territorial agencies on aging and disabilities. Each of our members oversees the implementation of the Older Americans Act (OAA), and many also serve as the operating agency in their state for Medicaid waivers and managed long-term services and supports programs that serve older adults and individuals with disabilities. Together with our members, we work to design, improve, and sustain state systems delivering home and community-based services (HCBS) and supports for people who are older or have a disability and for their caregivers.

As you know, the proposed rule would remove regulatory language promulgated in 2014 that added exceptions to the prohibition on reassignment of provider claims. Specifically, the 2014 regulation allowed for payment to a third party, "for benefits such as health insurance, skills training and other benefits customary for employees."¹ Based on this provision, states have the option to establish payment arrangements with third party entities to assist with group purchasing of insurance, to help with skills training and other professional tasks.

We are concerned that removal of this provision may limit the ability of states to assist with ensuring cost-effective health insurance coverage for service providers or to establish training protocols that improve the quality of HCBS. This would be disruptive to a number of states who have leveraged this provision in efforts to address worker shortages by expanding benefits that can help recruit and retain providers in their HCBS systems. We specifically note that the 2014 regulation established an option that states can elect to implement and is not a requirement. Therefore, we recommend that this provision be retained as a state option and not as a mandate.

¹ 42 CFR §447.10(g)(4)

We also are concerned that the regulation may inadvertently limit the ability of states to ensure that there are appropriate supports for individuals who self-direct their long-term services and supports (LTSS). In many LTSS programs, participants have employer authority, which provides the right to hire and fire staff, set hours, and train the individuals providing care. In a number of cases, individuals can also direct how the money in their LTSS budget is spent through a process known as budget authority. In order to support individuals perform the tasks associated with self-direction, states routinely establish fiscal intermediary services, which can be financed in a number of different ways including through deductions from the participant budgets and provider payments. We recognize that the preamble of the regulation specifically addresses issues of self-direction and that CMS does not intend to limit the ability of participants to exercise employer and budget authority. If CMS does finalize this change, we recommend including language that specifically allows for the option to deduct finance costs associated with self-directed care, including fiscal intermediary services, payroll taxes, and other necessary expenses.

We appreciate the opportunity to comment on this regulation and would be happy to discuss our concerns in more detail. Please feel free to contact Damon Terzaghi of my staff at dterzaghi@nasuad.org with any questions about these comments.

Sincerely,



Martha A. Roherty
Executive Director
NASUAD