July 3, 2023

Chiquita Brooks-LaSure, Administrator
Centers for Medicare & Medicaid Services, Department of Health and Human Services
Attention: CMS–9894–P, P.O. Box 8016, Baltimore, MD 21244–8016
Submitted via regulations.gov.

RE: Medicaid Program; Medicaid and Children's Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality

Dear Administrator Brooks-LaSure,

United States of Care (USofCare) is pleased to submit comments in support of the proposed rule by the Centers for Medicare & Medicaid Services (CMS) entitled "Medicaid Program; Medicaid and Children's Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality."

USofCare is a nonpartisan nonprofit working to ensure everyone has access to quality, affordable health care regardless of health status, social need, or income. We drive change at the state and federal level in partnership with everyday people, business leaders, health care innovators, fellow advocates, and policymakers. Together, we advocate for new solutions to tackle our shared health care challenges — solutions that people of every demographic tell us will bring them peace of mind and make a positive impact on their lives. Through our work in states, we are able to identify unique perspectives from people on the ground to amplify on both the state and federal levels. Where possible, we uplift the voices of real people engaging with the health care system at the patient level whose perspectives have shaped our advocacy work.

Previously, USofCare submitted comments in response to a September 2022 proposed rule to streamline Medicaid and Children's Health Insurance Program (CHIP) enrollment and eligibility requirements. We were pleased that CMS incorporated that stakeholder feedback into the rule we seek to comment on today. If enacted, this rule will improve health outcomes and expand access to Medicaid Managed Care programs, which serve upwards of 57 million people across the country. Overall, USofCare strongly supports and advocates for the swift adoption of this rule.

USofCare supports the provisions suggested by the rule and focuses our comments on the following topics:

1. Access & Network Adequacy
2. Rate Transparency
3. Home & Community-Based Services
4. Beneficiary Voice & Engagement

Access & Network Adequacy

Changes made to the Medicaid managed care regulations by the previous Administration as part of the 2020 final rule weakened protections for beneficiaries and allowed states to adopt their own standards for network adequacy, even if such standards fell below earlier federal recommendations regarding maximum appointment wait times. **USofCare strongly supports federal requirements to establish "appointment wait time standards" for certain provider types to strengthen enrollees' provider networks and more closely**

align these standards with those found in plans offered on the individual marketplace, should someone no longer qualify for Medicaid coverage.

Appointment Wait Time Standards

We support the four types of services as listed by CMS subject to the appointment wait time standards as they address some of the most pressing needs facing patients today - mental health care services, preventive care, and other primary care services – where quick, easy access to these providers can often mean the difference between life and death. **While this is a good first step, we encourage CMS to further quantify additional types of services subject to these standards, including emergency and urgent care, behavioral health care, and prenatal and postpartum care services, to ensure that people's comprehensive access to care is not limited to just the four services listed by CMS.**

We also encourage CMS to take further action to lower the maximum standards further – where possible, Colorado's appointment wait time standards provide an acceptable template. We are also supportive of the proposed rule's "secret shopper" proposal to ensure plans are complying with these new appointment wait time standards and to make sure Medicaid Managed Care Organization (MCO) provider directories remain updated. We further encourage CMS to work with states to post their "secret shopper" survey reports in one place, such as medicaid.gov, so that people can find them with ease and use them to compare reports and MCO performance across states. We know that people value a system that is easy to understand, and providing this information publicly is a powerful tool to ensure people know the options available to them, especially for those communities who have historically lacked access to reliable health care.

Given the importance of this information for people, we urge CMS to require states to come into compliance with the requirements of this regulation sooner than proposed. In particular, allowing four years before states implement the independent secret shopper requirements seems far too long when many states already have experience conducting such surveys. Under this proposal, beneficiaries and other stakeholders will not see this crucial information until 2028 or later, with any results from improvement coming after that. We urge CMS to work with states to shorten this timeframe.

Expanding Access to Culturally Competent & Culturally Responsive Care

We encourage CMS to reverse additional changes made by the 2020 final rule regarding written materials for people with disabilities and people with limited English proficiency. The 2020 final rule limited "locally prevalent" non-English language translations to only materials that are "critical to obtaining services." We ask that CMS reconsider this more recent interpretation of the language translation language to ensure that all beneficiary-facing materials, including provider directories and beneficiary enrollment and information bulletins, be translated to "locally prevalent" non-English languages.

> *"Having someone who has even the slightest cultural competence I think would help us erase that hesitancy to go [seek healthcare services]... they're more willing to sit down and build relationships and understand where we're coming from instead of giving us the standard of care that is just constantly happening but nothing ever works from it."*
> *~ Indigenous Woman, Member of a Southwestern Federally Recognized Tribal Nation*

In addition, the 2020 final rule also reversed language found in the 2016 final rule that required provider directories to list whether providers completed cultural competency training. Providers who are culturally competent or culturally responsive to the needs of their patients, are better able to serve the needs of their communities and increase health equity. **United States of Care strongly supports adding back language identifying providers who have completed cultural competency training; furthermore, we are supportive of requiring providers to undergo cultural competence or anti-bias training as a condition of participation in a plan's network.** States are already exploring and implementing similar requirements to ensure that care is culturally competent and responsive. As part of its culturally responsive network provisions, the Colorado Option includes the requirement that 90% of all providers and front office staff receive similar training by 2024; as part of their application for licensure, state-regulated health insurance plans in New Mexico must submit a plan to their Division of Insurance regarding how they will address cultural and linguistic diversity in their covered populations.

Rate Transparency

We appreciate the continued efforts by CMS to ensure provider payment rates do not impact Medicaid enrollees' access to care, both in this proposed rule and the companion "Medicaid Access" rule. **We enthusiastically support CMS's proposal to require a payment analysis of rates paid by MCOs to providers, as well as the broader goal of establishing a standardized comparative data source available to assess Medicaid and CHIP payment rates across specialties, plans, and states.** We also support the requirement that states post the report of the analysis within thirty days of submission to CMS so that the data is usable in real-time.

We strongly support the proposal to require states to promptly submit a remedy plan when CMS identifies areas for improvement for access to services and recommend that the remedy plans, once approved, are made publicly available. We support related efforts to increase transparency by requiring more detailed information about State Directed Payments used under Medicaid managed care, especially given their increased prevalence in Medicaid.

Information Requirements

We support the requirement that managed care contracts and other important information be accessible through a single webpage and that documents and links have clear labels that enable users to clearly identify information contained in them. We urge CMS, however, to add a requirement that states post the Annual Medical Loss Ratio reports that MCOs must submit to the state Medicaid agencies. These reports provide crucial information about how MCOs are spending money on items and activities other than providing services – including how much profit they are earning. Enrollees, providers, advocates, and other members of the public deserve to know how Medicaid capitated payments are being used.

Home- & Community-Based Services

USofCare applauds CMS's efforts to improve Home- and Community-Based Services (HCBS) in Managed Care as outlined in the proposed rule. This is critical as more states opt to cover HCBS through Medicaid Managed Care programs, in addition to Medicaid Fee-For-Service structures.

Establishing Grievance & Incident Management Systems

Disturbing reports and data illuminate a deadly, systemic neglect for basic health and safety protocols in HCBS settings across the country. **USofCare applauds CMS's proposal to establish a critical incidents grievance system for HCBS beneficiaries.** We suggest a requirement that providers *simultaneously* report critical incidents to both the state and the designated Protection & Advocacy program, which is consistent with incident reporting requirements in psychiatric institutions. Implementing these systems as suggested allows for states to respond to incidents in an urgent manner that mitigates further harm.

Supporting Caregivers

> *"[Caregiving] is a hard job, but it's rewarding to see our kids succeed and keep moving and keep showing the world that they are fighting. It's hard, but we can do it. And we can do it together. We have to find a community and establish that caregiver community so that you know you're not alone. There are other people facing the same thing that you are; they have the same struggles that you have."*
> *~ Hispanic woman, Virginia*

USofCare supports CMS's efforts to ensure that home care workers are paid adequately amid a dire, growing shortage of direct care workers. By requiring that 80% of payments in HCBS settings go directly towards the compensation, salary, and benefits of home care workers, states will better ensure that home care workers are appropriately compensated for the critical services they provide. The workforce experiences high turnover rates, and in 2021, the median wage for direct care workers was $14.27 per hour. BIPOC women and immigrants disproportionately make up the care workforce. The low pay, scant benefits, and lack of respect that these workers receive stem from a long history of racism, sexism, and xenophobia. We further implore CMS to extend these payment adequacy provisions to state plan personal care and home health services. Properly and transparently investing in the direct care workforce not only provides the workers with the respect and dignity they deserve, but also leads to an improved quality of care for enrollees.

> *"[My parents are] living on [government support], living on food stamps . . . you know, barely head above water.. [I'm responsible for] medical bills, clothing items, or whatever prescription we need to pay for whenever Medicare and Medicaid doesn't pay."*
> *~ Caregiver Interviewed by USofCare*

USofCare encourages additional investments into "informal" caregivers. Informal caregivers are often family members or friends who care for their loved ones, increasingly in part due to the shortage of direct care workers. While about two-thirds of states permit the payment of legally-authorized relatives to provide HCBS services under Medicaid waivers, family caregivers require further support. Informal caregivers provide an estimated $600 billion in unpaid care to their relatives, which can result in them shouldering financial, physical, and mental burnout from their responsibilities. We recommend that CMS follow states like Colorado, who have implemented Medicaid programs to train family members as certified nursing assistants and pay them to become caregivers, yielding comparable levels of care to that of direct care workers. Furthermore, CMS should maintain the Appendix K Waiver so that families can be paid for caregiving work, which proved to effectively combat the workforce shortage during the COVID-19 pandemic. Supporting informal caregivers alleviates the shortage of direct care workers and leads to personalized continuity of care for recipients.

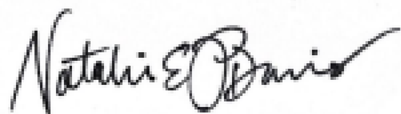
HCBS Data Reporting
USofCare welcomes the new requirements proposed by the rule that would require states to annually disclose data related to HCBS access in Managed Care settings. It is increasingly difficult for stakeholders to obtain HCBS quality, access, and outcomes data in different states. Under the proposed rule, states must publish data related to waiting list eligibility, time elapsed between being approved for and receiving services, and what percentage of home care services were provided in the last 12 months in an accessible, frequent manner. This will provide sorely-needed transparency to a system that people often spend years waiting on for critical care. The rule will also ensure that states report on select measures included in the HCBS Quality Set. While states would have to make a significant investment into how they report data, this would allow for consistent, standardized data across the states, which is not currently the case. People need to be provided with understandable information as they make complex decisions related to their care, which we know will provide them peace of mind.

Beneficiary Voice & Engagement
Our listening work tells us that people feel isolated and struggle to understand and navigate the health care landscape. People want an understandable system, which is why **USofCare supports the proposed requirement for states to create a "one-stop-shop" website within the framework of the Medicaid and CHIP Quality Rating System (MAC-QRS).** The "one-stop-shop" would provide vital information regarding eligibility and comparisons of managed care plans based on quality, which allows people to make informed decisions and to select a plan that best suits their needs. As millions of people lose coverage due to Medicaid redeterminations, states must provide easy access for those seeking to understand their eligibility and options for procuring coverage they qualify for. Furthermore, CMS and state Medicaid agencies should simultaneously provide robust and tailored outreach utilizing various channels, such as text messaging and mail, to reach people lacking stable internet access. Effective outreach about these changes must prioritize accessibility and be conducted in multiple languages.

USofCare supports the proposed mandate for states to conduct an annual survey to evaluate the experience of enrollees in each Medicaid Managed Care plan and to publicly disclose the results on states' websites. The more data we have, the better we can tailor the health care system to meet the needs of people covered by Medicaid. By increasing the transparency of enrollee experiences, we can empower patients, promote accountability of Managed Care plans, and provide additional avenues for informed decision-making.

Conclusion
USofCare encourages the swift adoption of this rule and believes that, if finalized, it can build towards our mission of ensuring everyone has access to quality, affordable health care. If you have any questions, please reach out to Lisa Hunter at LHunter@usofcare.org.

Sincerely,



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