



STATE OF UTAH

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GOVERNOR

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84114-2220

SPENCER J. COX
LIEUTENANT GOVERNOR

January 29, 2020

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Administrator Verma,

I appreciate your work to give Utah flexibility in our Medicaid program, allowing us to customize the program to fit Utah's needs and budget. I also appreciate our recent conversation about block grants and their value to states wishing to experiment with better ways to help their residents.

Today I write in response to the Medicaid Fiscal Accountability Regulation (MFAR) recently proposed by the Centers for Medicare and Medicaid Services (CMS). Just as we've worked together on Utah's Medicaid expansion, I hope we can find similar common interests in this proposed regulation.

As governor, I have often pointed out the immense gulf between budget practices at the state and federal level. As directed by their constitutions or other governing law, states must balance their budgets each year. This requirement leads to a difficult but essential process of prioritizing limited spending across many valid needs. I have long hoped that the federal government would move towards a more balanced budget. I recognize that MFAR represents an effort to corral Medicaid spending in several areas that have grown rapidly over the years. I fully appreciate CMS's desire to provide more transparency to federal lawmakers and administration officials on the services being provided through these expenditures and the process for generating the required state match.

Our Medicaid team is participating in a collective effort with other states to provide more detailed comments through the National Association of Medicaid Directors (NAMD). However, I would like to highlight for you several areas where the proposed regulation could have significant impact on Utah depending on the final provisions adopted in MFAR.

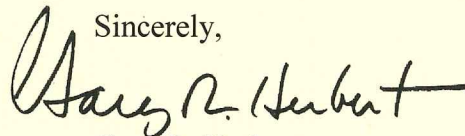
MFAR proposes a very limited definition of funds that can be used as Medicaid state match. This definition would exclude many existing sources of funds that meet the current definition of "public funds" in 42 CFR 433.51. In state fiscal year 2019, Utah's Medicaid program received \$122,434,000 in intergovernmental transfers. Utah Medicaid provided approximately \$406,083,000 in services based on these transfers. The government entities providing the intergovernmental transfers to the Medicaid program certified that the funds were all public funds. However, it is unclear at this time how many of those transfers would be able to meet the new limited definition in the proposed regulation. A swift and drastic change in the definition could lead to a significant loss of funding for hospital services, nursing home services, behavioral health services, and many other services in Utah. For example, several of Utah's local government owned, rural hospitals own nursing homes around the state. These hospitals make intergovernmental transfers to the state and the nursing facilities they own receive supplemental upper payment limit payments. This program provides significant funding for Utah's nursing facilities and the rural hospitals that own them.

MFAR also proposes changes to certified public expenditures (CPEs). School districts in Utah have relied on CPEs to finance Medicaid services provided to children while they are in school. In state fiscal year 2019, Utah's Medicaid program accounted for \$33,544,400 in services and administration provided through the school districts. By allowing these CPEs, Utah obtained reimbursement for \$21,352,100 in federal funds for these Medicaid services. A swift and drastic change in the definition of an allowable CPE, particularly in a requirement that a state process all claims for medical assistance funded via CPE through its Medicaid claim system to identify the specific Medicaid services provided to specific enrollees, could lead to a significant loss of funding for services that have been provided to these Medicaid eligible children in the schools.

In addition, MFAR would prohibit the state from collecting administrative fees determined by calculating a percentage of the total amount paid to the participating government entity. In state fiscal year 2019, Utah's Medicaid program collected \$5,348,800 in administrative fees to support the personnel, systems, and vendors necessary to administer these programs. MFAR seems to allow states to charge a fixed amount for the same purpose but does not provide guidance on how CMS would determine the reasonableness of fixed administrative fees set by the state.

In light of the potential significant impact that MFAR could have on Medicaid services provided in Utah, I ask that CMS extend the implementation window for states to five years. Depending on the provisions adopted in the final regulation, Utah would likely need this timeframe to make the necessary changes to its budgets, systems, and processes in order to come into compliance with the new guidance while preserving essential services to its Medicaid members.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary R. Herbert". The signature is fluid and cursive, with a large initial "G" and "H".

Gary R. Herbert
Governor