



Att: Jeremy Silankis
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–2328–NC
P.O. Box 8016
Baltimore, MD 21244–8016
Via electronic submission at <http://www.regulations.gov>

Re: Medicaid Program; Methods for Assuring Access to Covered Medicaid Services-Exemptions for States With High Managed Care Penetration Rates and Rate Reduction Threshold published in the Federal Register on March 23, 2018, RIN 0938-AT41

May 21, 2018

Dear Mr. Silankis,

ANCOR is a national trade association representing more than 1,400 private providers of community living and employment services to more than a million individuals with intellectual and developmental disabilities (I/DD), and employing more than 400,000 direct support professionals (DSPs) and other staff.

Although the current regulations around the Access Rule do not impact many of our services provided under the home and community-based service (HCBS) waivers, state plans, and 1115 waivers, we felt compelled to weigh in on the proposed rule because of our history with the Access rule as we will further explain below and our firm belief that an overall improved and accountable Medicaid program benefits people with disabilities who rely on Medicaid-funded supports and services.

First and foremost, we urge revisitation of [ANCOR comments submitted in January 2016](#) that we believe addresses a key concern about the need for CMS guidance on access monitoring for home and community-based service waivers. [The President’s Committee for People with Intellectual Disabilities released their report](#) this year about the workforce crisis in our field and the connection to poor reimbursement rates. This report paired with the facts that *Armstrong v. Exceptional Child Center Inc.* focused on low rates for HCBS disability services and waiting lists for these services have erupted in virtually every state, we believe, provides a strong basis for CMS to ensure that states have a structured framework in place to address access for people with disabilities.

Although HCBS has not be included in past requirements for Access Monitoring Review Plans (AMRPs), we do feel that the November 2015 rules, although limited in scope, laid out a thoughtful and consistent approach for states to report on their access monitoring. Further, if there is concern about lessening

administrative burden, our understanding from the April MACPAC hearing discussion is that there is limited burden on this type of reporting and that the reports can mostly be electronically generated without significant strain on state staff. We encourage CMS to continue to uphold the November 2015 rules and consider a streamlined model for reporting. We also encourage broadening the 2015 rules to programs like HCBS that could use this thoughtful approach.

We do not fully support the recommendation made in the current proposed rule to exempt states with high managed care rates from participating in the reporting of AMRPs. Although the 2015 MLTSS rule may have addressed some of the concerns also addressed in the AMRP structure, we believe the AMRPs are again, well thought out, and a great tool for states and CMS to gauge adherence to the access rule. The access rule is such an important component of the Medicaid statute and could be severely undermined by such an exemption. Further, it is our understanding the 2015 MLTSS rules will be revisited and thus some of the present monitoring tools in the MLTSS rules could be removed, leaving states with no accounting of rate and access changes in the states.

We also do not support the recommendation made in the current proposed rule to allow nonreporting on “nominal” changes in rates. Many of our members provide services in states where there has not been *any* increase in rates for over a decade. Every tenth of a percentage increase or decrease speaks to the quality of services that people with disabilities receive. We urge CMS to revisit changes to reporting requirements and ensure that the Medicaid program remains and becomes even more so accountable and robust.

While we are cognizant that our comments are limited in nature, we felt it was necessary to weigh in with our voice. We strongly believe that the access rule regulations of November 2015 must be upheld and should be expanded to other programs like HCBS that have impressive outcomes but extraordinary waiting lists and poor reimbursement structures to make them sustainable. We are pleased that the Trump Administration is committed to the accountability and sustainability of the Medicaid program and we believe it is rules like the access rule that lay the foundation to this result.

Sincerely,

A handwritten signature in black ink, appearing to read "Esmé Grant Grewal". The signature is fluid and cursive, with a large initial "E" and a long, sweeping tail.

Esmé Grant Grewal, Esq.
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