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October 21, 2022

The Honorable Xavier Becerra
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure
Administrator Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Re: Medicaid Program and CHIP; Mandatory Medicaid and Children’s Health Insurance Program (CHIP) Core Set Reporting; Proposed Rule - CMS-2440-P

Submitted via federalregister.gov

Dear Secretary Becerra and Administrator Brooks-LaSure,

Thank you for the opportunity to comment on Medicaid Program and CHIP; Mandatory Medicaid and Children’s Health Insurance Program (CHIP) Core Set Reporting; Proposed Rule - CMS-2440-P. First Focus on Children is a bipartisan advocacy organization dedicated to ensuring children and families are a priority in federal policy decisions. These comments are focused on the Child Core Set and the behavioral health measures on the Core Set of Adult Health Care Quality Measures (herein referred to as the “Adult Behavioral Health Core Set”).

Mandatory Reporting

Mandatory reporting of the Child Core Set, the Adult Behavioral Health Core Set, and the Health Home Core Sets of Health Care Quality Measures in Medicaid and CHIP as required in statute, beginning in the reporting year 2024, is a major step toward transparency and accountability. Until 2024, state reporting on the core sets is voluntary. And while reporting has improved over time, many states still lag in reporting these key data. A mandatory requirement to measure and report on the quality of care is critical for states and Medicaid and CHIP stakeholders to identify areas in need of improvement and take steps to improve the quality of care. However, we are concerned that the proposed regulatory structure does not accomplish full mandatory reporting, beginning in the reporting year 2024, as required in statute at Sections 1139A(a)(4)(b) and 1139B(b)(3)(B). Specifically, we do not agree that the Secretary has the statutory authority to delay mandating state reporting as detailed in our comments below. We do note that the Secretary may have more flexibility to phase in national publication of state-level data, however, we are concerned about the lack of urgency in achieving transparency in reporting state-level data for all mandated core measures and recommend that any phase-in of national publication of state-level data be limited to no more than three years.

In addition, mandatory reporting of the Adult Core Set and the Child Core Set will help in reducing health disparities and addressing the national emergency in child and adolescent mental health. Without having data on behavioral health measures, or stratification of data to address specific groups' needs, we cannot make improvements to child behavioral and physical health quality in Medicaid and CHIP. Therefore, we strongly support mandatory reporting on such measures for all states.

Stratification

The COVID-19 pandemic has further illuminated the health disparities that exist for children of color, who are enrolled disproportionately in Medicaid and CHIP. Stratifying quality measures, particularly by race and ethnicity, is essential to improving [child, maternal, and behavioral health](#) and addressing health [disparities that exist people of color](#). However, we recognize that states face challenges in stratifying measures, particularly as it relates to race and ethnicity, and generally support the proposed rule's phased-in approach to stratification. We also agree with the proposed rule at §437.10(d) that the Secretary should specify which measures must be stratified in order to promote consistency and comparability across states rather than allowing states to choose. We urge the Secretary to prioritize how stratification is phased in based on the areas of most urgent need, including maternal and behavioral health. We also recommend that stratification by health plan, as required in the statute at §1139A(b)(2)(C), be specified in the regulation. A majority of Medicaid beneficiaries are enrolled in managed care plans but there is [limited public data assessing access and the quality of care](#), which varies widely across different states and health plans. We believe it's important to specify stratification by health plan in the regulation.

As mentioned, Medicaid and CHIP is the [largest source of coverage](#) for children of color. The programs together cover half of all American Indian or Native Alaskan, Black, other or multiracial, and Hispanic children, compared to nearly 30 percent of white children who are covered by Medicaid and CHIP. Therefore, stratifying quality measures by race, ethnicity, age, disability, rural/urban status, and other factors are crucial to improving child health and addressing health disparities, especially at a time when millions of children, especially children of color, [stand to lose coverage](#) at the end of the Public Health Emergency.

Duration of Coverage Measure

We also want to take this opportunity to point out that while the statutory language specifies different types of services, treatments and settings to be measured, there is only one specific measure noted in the statute – the duration of children's health insurance coverage over a 12-month time period (§1139A(a)(3)(A)). As of the 2020 Child Core Set, 11 years after the initial core set was published, there is no duration or continuity of coverage measure. Most health quality measures require a minimum period of coverage continuity and yet there [continues to be a high rate of churn in Medicaid and CHIP](#) in many states. As a result, quality reporting is incomplete and does not always reflect the experience of enrollees who churn off coverage. A duration of coverage measure is needed to evaluate the extent to which the reporting data may be incomplete. We urge the Secretary to take action to meet its statutory obligation and ensure that such a measure is developed, tested, and added to the Child Core Set as soon as possible and no later than mandatory reporting for 2024.

Having data on duration of coverage for children enrolled in Medicaid and CHIP will aid in ensuring children have access to uninterrupted healthcare, which is especially important during childhood. Having uninterrupted healthcare coverage from birth to age 6 allows children to have consistent access to well-child visits, vaccinations, and specialty care. During these first five years, children need regular, routine checkups. Without these checks and referrals, care may be delayed until it is too late, and children may suffer unnecessary, long-term harm.

When renewing children's Medicaid/CHIP coverage, some states use strict redetermination and renewal policies that make it difficult for families to maintain their children's coverage. While the COVID-19 Public Health Emergency stipulated that states had to follow maintenance-of-effort requirements that included a

general prohibition against terminating beneficiaries' Medicaid coverage, these mandates will soon expire and states will begin conducting redeterminations of beneficiaries, including states with stricter policies. Quick turnarounds for redetermining eligibility is often too short for families — who may be balancing multiple needs of their children — to determine what information is needed, locate it, and send it back to their state. Because of these strict policies, eligible children may lose their coverage if their parents don't respond in time. This is especially a concern in states with low-income eligibility levels for children because even a minor, [temporary increase in family income](#) can cause a child to be ineligible and lose their coverage. Therefore, having data on duration of coverage will be especially important in the coming years as the PHE expires.

Annual guidance on the core set reporting

The proposed rule at §437.10(a)(3) requires the Secretary to develop and annually update reporting guidance. The guidance is a key resource addressing the Secretary's statutory requirement under §1139A(a)(7) to provide technical assistance to the states in adopting and utilizing the core sets. Importantly, the current annual review process, as noted in our comments, gathers and documents technical specifications and describes how the measure is actionable and contributes to quality. The process also requires that recommended measures meet other standards, including minimum technical feasibility and testing in Medicaid and CHIP. This advance work assists the Secretary in updating the core sets and is foundational to the Secretary's reporting guidance.

In order to foster timely mandatory reporting by the states, we recommend that a deadline for such guidance require the Secretary to publish annual updates to the core sets no later than January 1.

The proposed provisions at §437.10(b) describe the content of annual guidance that the Secretary would be required to provide to states in reporting core set data. *We generally support the provisions in this subpart which specify the content of the Secretary's annual guidance to the states.*

Section 437.10(b)(3) would require states to comply with the Secretary's guidance for reporting measure data in a standardized format. Standardized format for reporting measure data is necessary to comply with statutory requirements at §1139A(a)(4) and §1139B(b)(3). In the 2020 Quality of Care for Children in Medicaid and CHIP Chart Pack, states collectively reported nearly 1,000 measures, of which only 16 deviated from technical specifications. States should be required to adhere to the guidance and technical specifications documented for all measures. This is consistent with the statutory language at §1139A(a)(4) and §1139B(b)(3) to ensure that the data required for such measures is collected and reported in a standardized format.

Mandatory state reporting and Secretary's authority

The proposed rule at §437.10(c) would allow the Secretary to phase in mandatory reporting for certain measures. This is inconsistent with the statutory requirements mandating state reporting of all Child Core Set and all Adult Behavioral Health Core Set measures beginning with the 2024 annual mandatory reporting. Section 1139A(a)(4)(B), entitled "Mandatory Reporting," stipulates that beginning with 2024 reporting "the Secretary shall require states to use the initial core measurement set and any updates or changes to that set to report information..." Furthermore, Section §1139A(c)(1), which delineates the requirements of the annual state reports under which such information is required to be reported, specifically specifies that this includes "all" measures. "Each State . . . shall annually report to Secretary on the – (A) State-specific child health quality measures applied by the States under such plans, including measures described in subparagraphs (A) and (B) of subsection (a)(6) and, beginning with the annual report on fiscal year 2024, **all** of the core measures described in subsection (a) and any updates or changes to those measure." (emphasis added)

Likewise, the statutory authority for mandatory reporting of the Adult Behavioral Health Core Set at §1139B(b)(3)(B), entitled "Mandatory Reporting with Respect to Behavioral Health Measures," stipulates that "Beginning with the State report required under subsection (d)(1) for 2024, the Secretary shall require States

to use **all** behavioral health measures included in the core set of adult health quality measures and any updates or changes to such measures to report information...” (emphasis added) And similarly at §1139(d)(1)(A) when describing the requirements of the state annual reports specifies that states shall report to the Secretary on “State-specific adult health quality measures applied by the State under such plan, including measures described in subsection (b)(5) and, beginning with the report for 2024, **all** behavioral health measures included in the core set of adult health quality measures maintained under such subsection (b)(5) and any updates or changes to such measures (as required under subsection (b)(3)).” (emphasis added)

It is important that the new quality measures be completely phased in in a timely manner. Therefore, we recommend that the final rules not adopt the proposed provisions allowing the Secretary to delay mandatory State reporting for certain measures and reporting for certain populations of beneficiaries but clarify that the Secretary may phase in national publication of state-level data, not to exceed three years.

Separate Child Health Insurance Programs (CHIP)

Section 437.15(b)(1) relates to reporting of Medicaid and CHIP beneficiaries in states that have implemented separate CHIP programs. The preamble of the proposed rule states that “. . . it is important that Child Core Set measures are reported for all populations covered in both Medicaid and CHIP.” We believe it is also important to monitor and analyze quality performance in separate CHIPs independently from Medicaid programs to allow for comparison of performance between the programs. Therefore, we propose at §437.15(b) that states with a separate CHIP report on Child Core Set measures in three categories: Medicaid and CHIP combined; Medicaid inclusive of CHIP-funded Medicaid expansion (Titles XIX and XXI); and separate CHIP (Title XXI).”

We recommend that the proposed language be revised to clearly articulate the three categories under §437.15(b).

Enforcement

The proposed rule at §433.112(b)(12) adds reporting on the standards and protocols established for the Child and Adult Core Sets and Health Home Core Sets, as adopted by the Secretary, to the list of standards and conditions that states must meet to qualify for enhanced federal funding for Medicaid IT systems.

We support this requirement and encourage the Secretary to use this authority to enforce compliance with mandatory reporting of the core set measures.

Additionally, §437.20, which would require that states amend their state Medicaid plans to specify that the state Medicaid agency will report on the Child and Adult Core Sets in accordance with the Secretary’s guidance under section §437.15. (States offering Health Home services would be subject to a similar requirement in relation to the Health Home Core Set). The purpose of this requirement is to give CMS clear authority to enforce the core set reporting requirements by withholding Federal Medicaid payments under section 1904 of the Act in the event of noncompliance by a state.

We strongly support this provision.

Thank you for the opportunity to submit this comment in support of the proposed rule. If you have any questions, please contact me at Brucel@firstfocus.org

Sincerely,

Bruce Lesley

Bruce Lesley
President, First Focus on Children