

# United States Senate

WASHINGTON, DC 20510

December 5, 2024

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health & Human Services  
200 Independence Avenue S.W.  
Washington, D.C. 20201

Dear Administrator Brooks-LaSure,

I am writing to better understand the Centers for Medicare and Medicaid Services (CMS) effort to manage Medicaid state-directed payment arrangements. In the Congressional Budget Office's (CBO) June 2024 budget outlook, it listed growth in Medicaid state-directed payments as a key driver of the growing federal deficit. Moreover, spending on these arrangements is expected to continue to grow and take up a larger percentage of Medicaid outlays. At the same time, independent evaluations have found that state-directed payments lack transparency and oversight. Your agency recently estimated that state-directed payments could cost up to \$91.0 billion in fiscal year (FY) 2025<sup>1</sup> (a separate analysis found this figure could be \$110.2 billion annually<sup>2</sup>), which is an increase from \$25.7 billion in FY 2020.<sup>3</sup> This 354 percent increase in payments over five years and uncertainty of growth merits further scrutiny.

In recent years, the Government Accountability Office (GAO) and the Medicaid and CHIP Payment and Access Commission (MACPAC) have provided Congress with some insight into state-directed payment arrangements, but their reporting has limits. A December 2023 GAO report found that state-directed payments have weak fiscal guardrails, make no consideration of payment outcomes when CMS renews a state's annual state-directed payment, and there are gaps in the transparency of important financing information, evaluation plans, and evaluation results.<sup>4</sup> MACPAC found in 2022 that "[l]ess than half of directed payment approval documents included information about projected spending amounts"<sup>5</sup> Separately, a 2023 MACPAC report found that state officials could not produce state-directed payment evaluations due to data collection lags

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<sup>1</sup> Medicaid Program; Medicaid and Children's Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality, 89 Fed. Reg. 41260 (to be codified at 42 C.F.R. Parts 430, 438, and 457), <https://www.govinfo.gov/content/pkg/FR-2024-05-10/pdf/2024-08085.pdf>.

<sup>2</sup> Medicaid and CHIP Payment and Access Commission (MACPAC), "Directed Payments in Medicaid Managed Care," October 2024, <https://www.macpac.gov/publication/directed-payments-in-medicaid-managed-care/>.

<sup>3</sup> Government Accountability Office (GAO), "Medicaid Managed Care, Rapid Spending Growth in State Directed Payments Needs Enhanced Oversight and Transparency," December 2023, <https://www.gao.gov/assets/gao-24-106202.pdf>.

<sup>4</sup> *Ib.*, p. 33.

<sup>5</sup> MACPAC, "Oversight of Managed Care Directed Payments," June 2022, <https://www.macpac.gov/wp-content/uploads/2022/06/Chapter-2-Oversight-of-Managed-Care-Directed-Payments-1.pdf>.

and other various reasons.<sup>6</sup> While your agency finalized a rule in May 2024 on state-directed payments establishing some transparency on these arrangements, CBO estimated this final rule will increase outlays by \$116 billion over 10 years.<sup>7</sup> Much of this increase in outlays is due to the final rule allowing providers to receive average commercial insurance rates (ACRs) through state-directed payments. Your agency's final rule noted, "we expect that these [state-directed payment] provisions will increase spending, not decrease spending."<sup>8</sup>

Your agency estimates that state-directed payments have grown to over 10 percent of total Medicaid managed care spending in 2022 and will reach 15 percent in a few years.<sup>9</sup> However, Congress lacks access to state-directed payment expenditure data because payment data exists only as a general item under managed care payments in the CMS-64 files. Estimates of state-directed payments are derived from files (i.e., preprints) produced by states and there is little evidence of whether data from preprints is accurate. While data collection of estimates by CMS has improved since 2021, transparency of expenditure data is still lacking.

To ensure Congress understands your agency's ongoing efforts, I request a response to the following questions by no later than January 2, 2025:

1. In 2017, CMS stated it could not "produce a detailed quantitative analysis" of state-directed payments.<sup>10</sup> However, it did note it was aware of approximately \$3.5 billion in approved state-directed payments and \$10.2 billion in state-directed payment arrangement applications. Furthermore, MACPAC found that between fiscal year 2017 through 2020 that state-directed payments were estimated to be \$27.1 billion across 96 arrangements. However, 105 approved arrangements had unknown spending estimates. Please share the estimated amounts for these 105 approved state-directed payment arrangements. If the amounts are not available, what information does CMS have about expenditures for the 105 arrangements with unknown spending estimates?
2. The May 2024 final rule stated "41.5 percent of all [state-directed payments] that CMS reviewed and approved from May 2016 through March 2022 were included in the State's rate certification submission as a separate payment term."<sup>11</sup> Please share the estimate or expenditure amount by fiscal year of separate payment terms included in state-directed payment arrangements from May 2016 through March 2022.

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<sup>6</sup> MACPAC, "Directed Payments in Medicaid Managed Care," June 2023, <https://www.macpac.gov/wp-content/uploads/2023/06/Directed-Payments-in-Medicaid-Managed-Care.pdf>.

<sup>7</sup> Congressional Budget Office (CBO), "An Update to the Budget and Economic Outlook: 2024 to 2034," June 2024, <https://www.cbo.gov/system/files/2024-06/60039-Outlook-2024.pdf>; Note: CBO estimates the proposed rule cost \$58 billion over the 2025-2034 period. CBO estimates 50 percent of the costs until the rule becomes final, which occurred after the June 2024 outlook was developed; therefore, the total cost of the rule is \$116 billion.

<sup>8</sup> Medicaid Program; Medicaid and Children's Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality, 89 Fed. Reg. 41261 (to be codified at 42 C.F.R. Parts 430, 438, and 457).

<sup>9</sup> Government Accountability Office (GAO), "Medicaid Managed Care, Rapid Spending Growth in State Directed Payments Needs Enhanced Oversight and Transparency," December 2023, <https://www.gao.gov/assets/gao-24-106202.pdf>.

<sup>10</sup> Medicaid Program; The Use of New or Increased Pass-Through Payments in Medicaid Managed Care Delivery Systems, 82 Fed. Reg. 5427 (to be codified at 42 C.F.R. Parts 438).

<sup>11</sup> Medicaid Program; Medicaid and Children's Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality, 89 Fed. Reg. 41105 (to be codified at 42 C.F.R. Parts 430, 438, and 457).

3. The May 2024 final rule establishes a prohibition on separate payment terms.<sup>12</sup> Instead, state-directed payments will have to include actuarially sound capitation payments with rate certifications submitted annually to CMS.<sup>13</sup> Will these annual rate certifications be made public? If CMS intends not to publicly publish the certifications, please provide all records once states submit the relevant documents.
4. The May 2024 final rule did not require transparency of the non-federal share source (e.g., state general funds, provider tax, intergovernmental transfer) used to fund state-directed payments. MACPAC says this is “critical for us to examine the effects of any changes to directed payments on access, quality, and value for providers and beneficiaries.”<sup>14</sup> However, the final rule did state, “as part of our review of [state-directed payment] proposals, we are increasingly encountering issues with State financing of the non-Federal share of [state-directed payments] that may not comply with the underlying Medicaid statute and regulations.”<sup>15</sup>
  - a. Why did the agency not require disclosure of non-federal share source(s)?
  - b. What specific issues is CMS encountering with states financing the non-federal share of state-directed payments mentioned in the May 2024 final rule? Please be specific.
  - c. The May 2024 final rule mentions using “subject matter experts on financing of the non-Federal share and demonstration authorities.”<sup>16</sup> Please describe how CMS ensures states follow federal law requiring that state funds be used for at least 40 percent of the non-federal share of Medicaid expenditures?<sup>17</sup>
5. GAO reports that state-directed payments grew to \$38.5 billion in FY 2022. However, CMS reports that state-directed payments were \$52.2 billion in FY 2022. GAO reports that the difference in estimates is due to timing and the types of state-directed payments. Please provide CMS’ methodology for calculating the FY 2022 estimate and reasoning for why it differs from GAO’s estimate.
6. My understanding is CBO does not have annual detailed state-directed payment expenditure data and is not aware of CMS’ methodology to determine annual state-directed payment expenditures. Why has the agency not established a central reporting system to track annual expenditures? Please share your agency’s methodology for determining annual state-directed payment expenditure. If state-directed payment data cannot be determined based on access to CMS-64 files, please explain why. I will note that a recent MACPAC report stated, “[p]reprints are not resubmitted to reconcile to the

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<sup>12</sup> *Ib.*, p. 41111.

<sup>13</sup> *Ib.*, p. 41272.

<sup>14</sup> MACPAC, “Directed Payments in Medicaid Managed Care,” October 2024, <https://www.macpac.gov/publication/directed-payments-in-medicaid-managed-care/>.

<sup>15</sup> Medicaid Program; Medicaid and Children’s Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality, 89 Fed. Reg. 41082 (to be codified at 42 C.F.R. Parts 430, 438, and 457).

<sup>16</sup> *Ib.*, p. 41041.

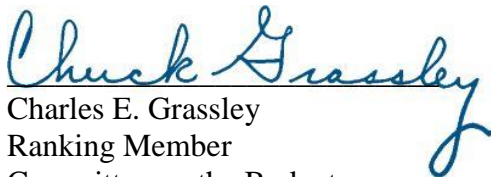
<sup>17</sup> 42 U.S.C. 1396a(a)(2).

actual payment amounts. Despite these limitations, directed payment preprints are still the most reliable source of directed payment amounts publicly available because there is no centralized reporting system for final directed payment spending as of our analysis.”<sup>18</sup> A lack of fiscal transparency is concerning.

7. Are FY 2024 state-directed payment arrangement estimates comparable to supplemental payments that are no longer permitted? If CMS cannot determine this, please explain why.
8. In GAO’s 2023 report, it issued the following recommendation, “The Administrator of CMS should make publicly available all approval documents related to new and renewed state directed payments, including application attachments, state evaluation plans, and evaluation results.”<sup>19</sup> CMS concurred with this recommendation, noted it is actively working to make documents from states publicly available, and said that states will be required to post their evaluation reports on a public website as required under the final rule.
  - a. What is the agency’s timeline for fulfilling GAO’s recommendation? Specifically, when will all approval documents related to new and renewed state-directed payments be made publicly available?
  - b. In addition, your final rule noted that the agency will issue technical assistance to states posting their evaluation reports on a public website. Has the technical assistance been issued? If not, when will this task be completed?
9. Has CMS approved a state-directed payment arrangement that distributes payments to an out-of-state entity? If so, please provide a complete list of state-directed payment arrangements and the entities receiving payment by fiscal year since 2017.

I look forward to your timely answers to my questions.

Sincerely,

  
Charles E. Grassley  
Ranking Member  
Committee on the Budget

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<sup>18</sup> MACPAC, “Directed Payments in Medicaid Managed Care,” October 2024, <https://www.macpac.gov/publication/directed-payments-in-medicaid-managed-care/>.

<sup>19</sup> Government Accountability Office (GAO), “Medicaid Managed Care, Rapid Spending Growth in State Directed Payments Needs Enhanced Oversight and Transparency,” December 2023, <https://www.gao.gov/assets/gao-24-106202.pdf>.