

Dem Doc Caucus To Oz: Medically Frail Requirements An 'Unfunded Mandate' On Providers

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The House Democratic Doctors Caucus is calling on CMS Administrator Mehmet Oz to reverse course on the policy requiring medically frail Medicaid applicants prove that their condition impairs their ability to work to be exempted from the Medicaid work requirement, saying the policy not only goes beyond the statute, it risks the health of patients with the most complex conditions -- and is essentially an unfunded mandate on the providers who will be called upon to assess patients' ability to work when other sources fail.

The letter sent Thursday (Sept. 3) and obtained by *IHP*, was spearheaded by Oregon Rep. Maxine Dexter, a pulmonologist, and signed by Reps. Kim Schrier (WA), Raul Ruiz (CA), Kelly Morrison (MN), Ami Bera (CA), and Herb Conaway (NJ).

At issue is CMS' interim final rule implementing the Medicaid work requirements that the lawmakers, like numerous other stakeholders, argue goes beyond the scope of the GOP's reconciliation law.

"The work reporting requirements created by HR 1 already add unnecessary burdens for people and will prevent millions who qualify from accessing Medicaid. However, even in HR 1, there were clear exemptions for individuals who are 'medically frail,'" Dexter says in an emailed statement. "CMS's Rule inexplicably goes dramatically further than the statute, imposing an additional requirement that *doctors* decide if these individuals are frail enough that they cannot work."

"There is no reason for this," Dexter continues. "As a physician, my training is in listening to my patients and helping them heal, not determining if they can access care and life-saving treatments. I have heard over and over again from leaders, organizations, and physicians in my state, who know that they and their patients will not

be able to meet these cruel requirements. If the rule as written isn't modified, the consequences will be devastating," she concludes.

Dexter's office tells *IHP* that the concerns raised by the community spurred the outreach to Oz.

"She and several other members of the Democratic Doctors' Caucus felt that writing a letter from the physician perspective would be particularly powerful since the Caucus members are uniquely positioned to speak on this issue as both lawmakers and physicians," Dexter's office says. "They are hopeful that adding their provider expertise and credentials will encourage CMS to consider removing this additional, unnecessary Rule."

The office also partnered with U.S. of Care on the letter.

The Democratic physician-lawmakers emphasize deep concerns about the impact the IFR's approach to the medically frail provision will have on their sickest patients.

"As physicians, we know first-hand the consequences of people not being able to access the health care they need -- and the particularly detrimental impact that can have on people with serious or complex medical conditions," they write.

The also point to an analysis of Arkansas work requirements, which found that coverage losses led to delays in getting care and taking medications.

"The IFR further harms people with serious medical conditions by imposing strict rules around their ability to 'self-attest' that their condition qualifies them for this exemption," the lawmakers say. "Notably, Arkansas's 2018 work requirements effort allowed for self-attestation alone for medical frailty, and even so, rates of disenrollment were actually higher among people with chronic conditions," they add.

The lawmakers further emphasize how the IFR impacts the provider community.

"As a physician yourself, you know first-hand how paperwork burdens can overwhelm clinicians and leave them with less time to actually practice medicine. As you said earlier this year, '...every minute providers save on paperwork is another minute they can spend caring for patients,'" the lawmakers remind Oz.

“We couldn’t agree more, which is why we are so concerned about the onus and extra paperwork that this IFR will place on clinicians, further limiting the amount of time they can dedicate to patients -- and in practice, many will simply not be able to complete these assessments,” they add.

Although Congress directed HHS to maximize use of ex parte, the lawmakers say, CMS’ medically frail requirements could make it impossible for states to rely on outside data sources to verify eligibility without contacting a beneficiary. This is because insurance claims -- the main source available to check conditions - are rarely granular enough to determine if a condition impairs the ability to work. For example, if a Medicaid applicant has cancer, claims data would not reveal which stage of the disease they are experiencing.

“The result will be that the burden of demonstrating eligibility for this exemption will fall to Medicaid enrollees and the health care providers who treat them,” the lawmakers say.

These providers will have to conduct individual assessments to determine patients’ ability to work, even though most physicians are not trained in occupational medicine and don’t have the skills needed to make such assessments. Even clinicians willing and able to make the assessments will have limited time without sacrificing patient care, particularly in safety net settings where most patients may have Medicaid, the letter adds.

“In other words, this IFR approach represents an enormous unfunded mandate on health care providers’ time and energy, which was never envisioned by the original statute,” the lawmakers say.

They further warn that the complexity of the individual assessments combined with a lack of clarity in the rule risks damaging the patient-physician relationship.

“Pulling physicians into a role that shifts their focus away from care and clinical evaluation and to gatekeepers in a high stakes, but ultimately subjective, determinations of consequential eligibility is dangerous and counterintuitive to the trust building necessary for optimal health outcomes,” they say.

They also flag CMS failure to consider the IFR's financial effect on providers in the regulatory impact statement, as required, "despite the fact that we know that the manner in which CMS is directing states to implement and operationalize the 'medically frail' exemption will impose significant administrative and paperwork burdens -- as well as new costs -- on clinicians."

The letter concludes by urging CMS to reverse course: "This definition is not only inconsistent with the statute but will inflict grave harm on people with serious or complex medical conditions and layer on additional administrative burden and red tape for people and health care providers," they say.

CMS' IFR was released in June, and CMS collected comments through July 31. A group of 25 attorneys general has challenged the IFR, including the medically frail provision in the case: *Commonwealth of Massachusetts v. Oz*.

The American Medical Association (AMA) filed an amicus brief in plaintiffs' request for a preliminary injunction with arguments similar to those in the lawmaker's letter.

AMA told the court: "Under the Rule, states may ask physicians to assess -- without validated criteria or clear standards -- whether a patient is too impaired to comply, i.e. whether that patient's medical condition 'significantly impairs' their ability to meet the work requirements. Requiring clinicians to assess whether a patient's medical condition prevents them from satisfying the work requirements will require patients to schedule appointments solely to obtain Medicaid eligibility documentation, reducing appointment availability for all patients seeking medical care in an already overburdened system," the AMA argued.

While the request for a preliminary injunction was denied, the case is moving forward with a hearing on a motion for summary judgment set for Oct. 20. -- Amy

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