

# CLIENT ALERT: CMS CONSIDERING APPLICATION OF ADDITIONAL ACCESS STANDARDS FOR FULLY FEE-FOR-SERVICE STATES

The Centers for Medicare & Medicaid Services (CMS) is considering timeliness standard requirements similar to those published in the CMS 2439-P Managed Care Access Finance and Quality proposed rule. The timeliness standards relate to proposed appointment wait-time standards, secret-shopper survey requirements, and publication requirements, and would apply to fully fee-for-services (FFS) states. CMS is seeking comment on the application of the following specific standards.

## Access Requirements for Fully Fee-for-Service (FFS) States

### Proposed § 42 CFR 438.68 (e) Appointment Wait Time Standards

1. States would be required to enforce wait-time standards for:
  - a. Pediatric and adult outpatient mental health and substance abuse – wait time of no more than 10 days.
  - b. Pediatric and adult primary care – wait time of no more than 15 days.
  - c. Obstetrics and gynecology – wait time of no more than 15 days.
  - d. Additional types of services determined by state in an evidenced-based manner – states would establish the wait-time standard using information such as claims data and provider complaints. CMS views this as an opportunity for states to address local access challenges.
2. State agencies would enforce these requirements through secret-shopper surveys.
3. States would be considered compliant with wait-time standards when the secret-shopper survey results demonstrate compliance at least 90 percent of the time.
4. CMS proposes a compliance date of four years after the effective date of the final rule.
5. States are required to post appointment wait-time standards on their websites and make standards available at no cost to enrollees with disabilities in alternate formats or through auxiliary aids, upon request. States must publish these standards within three years of the final rule effective date.

CMS also seeks comment on the methods through which they can collect data to demonstrate that states are meeting wait-time standards at least 90 percent of the time.

## Proposed §§ 42 CFR 438.68 (f), 457.1207, and 457.1218 Secret-Shopper Surveys

1. CMS proposes to require states to use independent entities to conduct secret-shopper surveys to ensure compliance with proposed wait-time standards and to determine the accuracy of electronic provider directories.
2. The requirement applies to stand-alone Children's Health Insurance Programs (CHIP).
3. CMS would also require the secret-shopper survey to verify four pieces of provider information:
  - a. Active network status.
  - b. Street address.
  - c. Telephone number.
  - d. If the provider is accepting new patients.
4. States must receive all provider directory errors identified in secret-shopper surveys no later than three business days from identification by independent entity conducting the survey. The information sent to the state must be sufficient to facilitate quick correction of the error and update the provider directory.
5. Appointments offered via telehealth will only be counted towards compliance with appointment wait-time standards if the provider also offers in-person appointments and if telehealth visits offered during the secret-shopper survey are identified in the survey results.
6. The results of the secret shopper surveys must be reported to CMS annually and posted on the state's website within 30 calendar days of the submission to CMS.
7. State would have to comply with these standards within four years of the final rule effective date.

The proposed rule is open for comments until July 3, 2023. Formal comments can be submitted [here](#).

### FOR MORE INFORMATION

**Lesley Beerends, MBA,  
CPA**  
**Senior Manager**  
PH 515.974.3100  
lbeerends@mslc.com

**Jerry Dubberly, PharmD**  
**Principal**  
PH 866. 758.3586  
jdubberly@mslc.com

**Timothy Guerrant, CPA**  
**Member**  
PH 800.877.6927  
tguerrant@mslc.com

**Judy Hatfield, CPA**  
**Member**  
PH 800.374.6858  
jhatfield@mslc.com

**Krista Stephani, CPA**  
**Member**  
PH 800.336.721, ext. 115  
kristas@mslc.com

**Megan Wyatt**  
**Senior Manager**  
PH 866.758.3586  
mwyatt@mslc.com



**MYERS AND  
STAUFFER**.LC