

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

CMS Final Rule: Ensuring Access To Medicaid Services (CMS 2442-F)

Under the April 27, 2023, proposed rule *Medicaid and Children's Health Insurance Program (CHIP) Ensuring Access to Medicaid Services (CMS-2442-F)*, the Centers for Medicare & Medicaid Services (CMS) sought public comment on timeliness standards for fully fee-for-services (FFS) states that would mirror the standards in the proposed rule *Managed Care Access Finance and Quality (CMS-2439-F)*. The intent of the requirement was to create additional alignment between the two delivery systems. The standards cover appointment wait times, secret shopper surveys, reporting requirements and apply to outpatient behavioral health services, primary care, obstetrics and gynecology and additional service types as determined by the state.

On the May 10, 2024, CMS published the finalized *Medicaid and Children's Health Insurance Program (CHIP) Ensuring Access to Medicaid Services* rule. **In this final rule, CMS is not implementing any FFS timeliness standards. However, it does plan to propose them in the future, based on public comments in response to the proposed rule.** By delaying implementation of the FFS timeliness standards, CMS plans to observe and learn from the standards being established in Medicaid managed care.

The proposed timeliness standards are summarized below.

Access Requirements for Fully 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.

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

