CMS Proposes Regulations that Would Have Significant Financial Impact on CCRCs

Hedy S. Rubinger and Alexander B. Foster

In November 2019, the Centers for Medicare & Medicaid Services proposed the Medicaid Fiscal Accountability Regulation (MFAR), a set of regulations targeted at promoting financial integrity in state Medicaid programs.[1] MFAR has now come under scrutiny by leading continuing care retirement community (CCRC) organizations, including LeadingAge and the National Continuing Care Residents Association (NaCCRA).

At issue are provider tax exemptions. As background, current federal Medicaid policy authorizes states to assess provider taxes and receive federal matching funds for revenue generated by those taxes. Nursing homes make up a significant portion of provider tax payors. Many states, however, exempt CCRCs from the tax program or discount the provider tax for such communities, perhaps in part because CCRC residents often pay out-of-pocket and the providers themselves often do not participate in Medicaid. MFAR would disallow federal matching funds for tax revenue that burdens the Medicaid program and likely result in disallowing such exemptions and discounts. The proposed regulations would have an impact on provider tax exemptions and discounts in Arizona, California, Colorado, Connecticut, Florida, Georgia, Indiana, Iowa, Kansas, Maryland, Massachusetts, Michigan, Nebraska, New Jersey, North Carolina, Oklahoma, Pennsylvania, and Washington.

In a January 13, 2020 letter[2] addressed to senators and representatives in the states listed above, Leading Age and NaCCRA expressed the following concerns:

- The MFAR proposal as written does more harm than good and would have dangerous implications for residents and providers of CCRCs.
- CMS is proposing regulations that would increase taxes on CCRCs by requiring CCRCs to subsidize the Medicaid program even though they largely do not participate in that program and their residents pay with their own funds for their nursing home care.
- While the exact cost of these new taxes would vary by state and by community, it could easily become a new six- or seven-figure cost each year. Thus, the CMS MFAR proposal could lead to a major new financial burden on CCRCs, and older Americans could face higher out-of-pocket costs if those communities were to pass the cost to the consumer via higher entrance fees and/or monthly fees.
- These CCRCs may conclude that the operation of a nursing home within their continuum is not financially sustainable and – as several CCRCs already are – may choose to reduce or close their nursing home operation rather than incur the additional tax burden. This could significantly constrict the availability of high-quality nursing home beds at precisely the time when the demand is expected to increase exponentially.

The two organizations concluded their letter by urging senators and representatives to contact CMS to express the concerns described in the letter and ask that the agency either withdraw the proposed rule and/or make revisions to any final rule that would protect continuing care retirement communities and their residents.

1 The proposed regulations may be accessed at https://www.federalregister.gov/documents/2019/11/18/2019-24763/medicaid-program-medicaid-fiscal-accountability-regulation.

2 The letter may be accessed at https://leadingage.org/sites/default/files/LeadingAge%20NaCCRA%20MFAR%20Letter_1.13.2020.pdf

Given the potential financial impact on CCRCs, owners and operators of such communities (and especially those with a skilled nursing component) should follow developments closely.

For more information, please contact Hedy S. Rubinger or Alexander B. Foster.

Authors and Contributors

Hedy S. Rubinger
Partner, Atlanta Office
404.873.8724
hedy.rubinger@agg.com

Alexander B. Foster
Associate, Atlanta Office
404.873.8598
alex.foster@agg.com

not *if*, but *how*.®

About Arnall Golden Gregory LLP

Arnall Golden Gregory (AGG) is an Am Law 200 law firm with offices in **Atlanta** and **Washington, DC**. Our client-service model is rooted in taking a "business sensibility" approach of fully understanding how our clients' legal matters fit into their overall business objectives. We provide industry knowledge, attention to detail, transparency and value to help businesses and individuals achieve their definition of success. Our transaction, litigation and regulatory counselors serve clients in healthcare, real estate, litigation and other dispute resolution, business transactions, fintech, global commerce, government investigations and logistics and transportation. With our rich experience and know-how, we don't ask "if," we figure out "how."
Visit us at www.agg.com.

Atlanta Office
171 17th Street, NW
Suite 2100
Atlanta, GA 30363

Washington, DC Office
1775 Pennsylvania Avenue, NW
Suite 1000
Washington, DC 20006

To subscribe to future alerts, insights and newsletters: **http://www.agg.com/subscribe/**