

July 3, 2023

Ms. Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services, Department of Health and Human Services
Attn: CMS-2242-P
PO Box 8016
Baltimore, MD 21244-1850

File Code: CMS-2442-P- Ensuring Access to Medicaid Services

Dear Ms. Brooks-LaSure:

The Academy of Nutrition and Dietetics (the “Academy”) is pleased to provide comments on File Code-CMS-2442-P - published in the Federal Register on May 3, 2023. Representing more than 112,000 registered dietitian nutritionists (RDNs),ⁱ nutrition and dietetic technicians, registered (NDTRs), and advanced-degree nutritionists, the Academy is the largest association of nutrition and dietetics practitioners committed to accelerating improvements in global health and well-being through food and nutrition.

RDNs deliver evidence based Medical Nutrition Therapy (MNT) to individuals throughout their lifespan and regardless of socioeconomic status. An RDN’s extensive formal education and training provides expertise in all aspects of food and nutrition, enabling us to play a key role in improving people’s nutritional status to prevent and treat chronic disease. RDNs are recognized for their unique ability to conduct and translate science and evidence through education, MNT and intensive behavior therapy.ⁱⁱ The National Academies of Sciences, Engineering, and Medicine maintains that “the registered dietitian is currently the single identifiable group of health-care practitioners with standardized education, clinical training, continuing education and national credentialing requirements necessary to be directly reimbursed as a provider of nutrition therapy”.ⁱⁱⁱ

The Academy appreciates the opportunity and offers the following comments to the *Ensuring Access to Medicaid Services* proposed rule:

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Medicaid and Medical Nutrition Therapy

CMS is the largest single payer of health care services in the United States.^{iv} More than 82 million Americans (including children, pregnant women, low income adults, elderly adults and people with disabilities) obtain their access to health care through Medicaid.^v In 2021, 28.6% of U.S. population lived at or below 200% the Federal Poverty Level and estimated associated health care cost to be \$728 hundred billion.^{vi} Medicaid is a major source of funding for hospitals, community-based health care centers, physicians and long-term care facilities.

To support a successful health care system, the Medicaid program must include services that demonstrably improve the nutritional status of Americans and reduce the rates of obesity, cardiovascular disease, renal disease, hypertension, diabetes, HIV, forms of cancer, celiac disease, stroke and other medical conditions. As detailed in the MNT Effectiveness Project published in the Academy's Evidence Analysis Library, MNT and other evidence-based nutrition services, from pre-conception through end-of-life, are an essential component of comprehensive health care whether provided as frontline therapy to prevent disease, delay disease progression or as an intervention in chronic care management.^{vi}

Four of the top six leading causes of death can be influenced and/or ameliorated by cost-effective nutrition and diet counseling and interventions by RDNs. RDNs provide high quality, evidence-based care and generate substantial cost-savings to the health care system.ⁱⁱⁱ Additionally, RDNs improve transitions of care, support care coordination (e.g., home health, outpatient care), address social determinants of health (e.g., food insecurity) and lead and participate in quality improvement initiatives.

Access to RDNs and MNT in state Medicaid programs is not a mandatory benefit. While MNT is an allowable optional benefit, it is not specifically listed as a distinct service but rather captured under “other.” The Academy believes that this lack of clear designation has led, in part, to access and coverage for MNT in state Medicaid programs to be inconsistent, ambiguous, restricted or all together absent.

The Academy defines MNT as “the evidenced-based application... [where] the provision of MNT (to a patient/client) may include one or more of the following: nutrition assessment/reassessment, nutrition diagnosis, nutrition intervention and nutrition and monitoring.”^{vii} Nutrition counseling, as a component of MNT, is medically necessary for chronic disease states in which dietary adjustment has a therapeutic role, when and if furnished by a qualified provider.

Nutrition counseling and medical nutrition therapy are established and recognized as medical services, embodied as preventive services by the U.S. Preventive Services Task Force, covered by Medicare^{viii} and private health insurance plans, and coded by the Current Procedural Terminology, CPT[®] 97802-97804.

Health plans cover MNT benefits distinct from nutrition education, wellness programs or weight loss services. Some plans specifically exclude “weight loss services” (which are usually understood to mean programs like WeightWatchers[®] or Nutrisystem[®]) but include MNT or bariatric surgery as chronic disease management for obesity. Similarly, plans may include a general wellness “nutrition counseling” benefit which may be limited to two annual visits with an RDN or other qualified nutrition professional, whereas an MNT benefit for diabetes or end stage renal disease is covered to allow more frequent

treatment. The Academy agrees with the National Academy of Medicine that the appropriate distinction for determining the extent of coverage for MNT versus simple nutrition education and wellness services is whether the nutrition-related service provided is medical rather than non-medical.^v

The Academy believes that both Medicaid and its beneficiaries would benefit from greater specificity of MNT listed under optional benefits.

Payment Rate Transparency

The Academy is overall supportive of transparency in healthcare, including the proposal to publish detailed rate information in an easily accessible and consistent format. The Academy agrees that improved transparency will likely benefit providers and beneficiaries. As it relates to providers, this will equip them with information that can help to better understand the payer market as well as make decisions respective to their own practices and their ability to provide care to Medicaid beneficiaries. Beneficiaries will be empowered to make informed decisions about the health care they receive. The Academy is also supportive of the proposal to use Medicare non-facility payment rates as a benchmark.

Not all state Medicaid programs allow RDNs to credential into their programs, and subsequently submit claims to Medicaid for services provided. Academy members who have been able to credential in state Medicaid programs have expressed serious financial concerns when attempting to provide nutrition care to Medicaid beneficiaries. A primary concern that has been shared by several members in multiple states relates to the difficulty of not only locating Medicaid fee schedules, but the very low payment rates assigned to the MNT CPT[®] codes. Anecdotally, members report that Medicaid reimbursement rates hover around 1/3-1/2 that of other payers, making it very difficult to accept a Medicaid assignment and provide care to Medicaid beneficiaries. To this end, one of our Academy member sub-units shared that severely low Medicaid payment rates have been a major deterrent for licensed dietitians to enroll as providers in the program, limiting access to care for Medicaid participants. Upon their review of the data, the department of Community Health showed only six dietitians in that state were enrolled to provide MNT for Medicaid beneficiaries.

While the Academy supports increasing transparency to payment rates, it is also prudent to mention that increasing transparency alone does not translate into expansion of coverage or ensuring access to care. It is a monumental task to uncover details specific to both benefit for and coverage of services provided in state Medicaid programs, including access to RDNs and an MNT benefit. In 2022, the Academy partnered with The George Washington University's Milken Institute School of Public Health to better understand how state Medicaid programs are addressing nutrition care services in their respective states. Preliminary findings have confirmed that access to evidence-based nutrition care is highly variable; provider entrance into the Medicaid program is unclear and cumbersome for those programs that acknowledge RDNs as providers, and there is a wide variation in how states address MNT CPT codes in both traditional fee-for-service payment models and Medicaid managed care.

The Academy urges CMS to use its regulatory authority to provide additional guidance to states to support clarity in their benefit and coverage design.

Home Based Community Services

The Academy is encouraged by the ability for state Medicaid Programs to utilize 1915c waivers to expand access to nutrition care services to Medicaid beneficiaries. These waivers support equitable access to and provide a pathway for beneficiaries to participate in person-centered nutrition care, which in turn can reduce nutrition related risks and chronic disease. Academy member feedback reported that utilization of 1915c waivers that focused on RDN provided services, improved access and supported providing care focusing on a whole health approach, which in turn supported improved clinical outcomes. Additionally, member feedback reported that while wait times to see a nutrition professional is growing and there is also an increased public awareness of food as medicine. Food as medicine are interventions led by RDNs and include such options as medically tailored meals, food programs and incentives and personalized nutrition education. These interventions require access to qualified nutrition professionals to see improved patient outcomes.^{ix}

The Academy believes that the continued use of 1915c waivers not only has the potential to promote equitable access to care but expand access to interventions and treatments. For example, utilization of 1915c waivers could increase access to interventions like medically tailored meals and food programs to those individuals who would benefit from access to appropriate foods to prevent chronic disease progression, manage and treat chronic diseases. This would also yield a positive outcome by reducing food insecurity and increasing food safety while allowing beneficiaries to stay in their own home and community.

The Academy urges CMS to establish clear guidance as it relates to nutrition care services, food and payment. There must be definitive language in policies that address not only the provision of food but also the clinical services that support the treatment and intervention for condition(s) or diagnosis. Attention must be given to identifying sustainable payment for the RDN provider delivering the MNT as a component of the food-based intervention, as well as adequate funding for the food intervention itself that has been tailored to the beneficiary's individual needs.

Medicaid Advisory Board

The Academy supports and applauds CMS's proposal to expand the composition of the Medicaid Advisory Committee (MAC) by including individuals who have lived experience as participants in Medicaid. We agree the inclusion of a Beneficiary Advisory Group (BAG) as part of the MAC provides a space where firsthand experience with Medicaid can be shared. Medicaid recipients are the individuals who are best equipped to provide personal testimonies that will detail the inaccuracies, gaps and barriers to care of the program.

The Academy requests CMS establish minimum standards for ancillary community Medicaid providers, such as RDNs, as part of the Medicaid Advisory Board. Given the importance of adequate and appropriate nutrition care, in wellness, disease prevention, and treatment, the input of qualified providers can help states improve their access to evidence-based nutrition care.

Thank you for your careful consideration of the Academy's comments regarding increasing access to care in Medicaid. Please do not hesitate to contact Jeanne Blankenship by phone at 312-899-1730 or by

email at jblankenship@eatright.org or Carly Leon at 312-899-1773 or by email at cleon@eatright.org with any questions or requests for additional information.

Sincerely,



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Carly Léon, MS, RDN
Director, health care policy and payment
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ⁱ The Academy has approved the optional use of the credential “registered dietitian nutritionist (RDN)” by “registered dietitians (RDs)” to more accurately convey who they are and what they do as the nation’s food and nutrition experts. The RD and RDN credentials have identical meanings and legal trademark definitions.

ⁱⁱ Medical Nutrition Therapy is defined as nutrition care services provided for treatment or management of diseases or medical conditions.

ⁱⁱⁱ Institute of Medicine (US) Committee on Nutrition Services for Medicare Beneficiaries. The Role of Nutrition in Maintaining Health in the Nation’s Elderly: Evaluating Coverage of Nutrition Services for the Medicare Population. Washington (DC): National Academies Press (US); 2000. 13, Providers of Nutrition Services. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK225306/>.

^{iv} CMS Roadmaps Overview. https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/qualityinitiativesgeninfo/downloads/roadmapoverview_oea_1-16.pdf (accessed June 26, 2023).

^v Who Enrolls in Medicaid & CHIP <https://www.medicaid.gov/state-overviews/scorecard/who-enrolls-medicaid-chip/index.html>. (accessed June 23, 2023).

^{vi} State health Facts: Total Medicaid Spending, Kaiser Family Foundation. <https://www.kff.org/medicaid/state-indicator/total-medicaid-spending/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (accessed June 23, 2023).

^{vii} The Academy of Nutrition and Dietetics Definition of Terms. <https://www.eatrightpro.org/practice/dietetics-resources/quality-management/definition-of-terms> (accessed June 23, 2023).

^{viii} Medical Nutrition Therapy National Coverage Determination. <https://www.cms.gov/medicare-coverage-database/view/ncd.aspx?ncdid=252>. Accessed June 26, 2023.

^{ix}Yoder, A et al. Perspectives of Food as Medicine Concept: Report of an Online Convenience Sample Survey of Registered Dietitian Nutritionist. Article in Press. *JAND* May 2023. <https://doi.org/10.1016/j.jand.2023.05.009>