June 11, 2015

Andrew Slavitt, MBA  
Acting Administrator  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Mr. Slavitt:

On March 30, Medicaid providers were deeply disappointed when the United States Supreme Court held in Armstrong v. Exceptional Child Center, Inc. that Medicaid providers do not have a cause of action to challenge a state’s Medicaid reimbursement rates under §1936a(a)(30)(A). Federal Medicaid statute requires states to set reimbursement rates that “may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.”1 In its 5-4 majority decision, the court reasoned that “…the Medicaid Act implicitly precludes private enforcement of §30(A), and respondents cannot, by invoking our equitable powers, circumvent Congress’s exclusion of private enforcement.”2

On behalf of the undersigned organizations of health providers, we urge you to use your authority to act swiftly to require that states meet their obligations to Medicaid providers and recipients by strongly enforcing Sec. 1936a(a)(30)(A). We believe the Supreme Court’s ruling presents an important opportunity for the Centers for Medicare and Medicaid Services (CMS) to take action now to address the problem of inadequate provider reimbursement rates under the Medicaid program. There is precedent for such action. Two years ago, CMS proposed regulation enforcing Sec. 1936a(a)(30)(A). To date, those regulations have yet to be finalized. We urge you to finalize and publish strong guidelines requiring state Medicaid programs to reimburse providers at rates that actually ensure access to care for Medicaid beneficiaries. Real enforcement of this 50 year old statute will finally guarantee that Medicaid enrollees not only have access to the health care services that they need, but more fundamentally, that they are treated with the respect and dignity they deserve as valuable members of our society.

It is well documented that Medicaid generally reimburses providers at rates far below those of Medicare and private insurance. On average, Medicaid pays physicians 66 percent of Medicare physician fees.3 In 2010, Congress required states to reimburse Medicaid primary care services at a rate that was equitable with Medicare in fiscal years 2013-2014. The Urban Institute estimated that the expiration of that provision in 2015 reduced primary care payment rates by an average of nearly 43 percent.4

1 42 U.S.C. 1396a(a)(30)(A)  
3 Kaiser Family Foundation: https://kaiserfamilyfoundation.files.wordpress.com/2013/01/8398.pdf  
These are national averages. Certain services are reimbursed at even lower rates in many states, often preventing providers from being able to care for patients covered by Medicaid. For example, in Rhode Island, providers who deliver primary care services receive Medicaid reimbursement that is a paltry third of what Medicare pays; similarly in New Jersey, obstetricians providing care to Medicaid patients are paid 37 percent of Medicare reimbursement. In California and Florida, pediatric dental services are paid at 29 percent and 37 percent of commercial charges, respectively. Medicaid payment rates for pediatric dental services have actually decreased in over half the states over the past decade (adjusting for overall inflation). Additionally, nursing centers are paid only 90 cents for every dollar of allowable costs they incur, on average. A typical nursing center would lose $1,336 dollars each day for providing needed care to Medicaid recipient. Over the course of the year, the shortfall between the center’s Medicaid rate and its Medicaid cost would exceed $487,000.

Medicaid reimbursement matters. Studies have shown there is a link between Medicaid reimbursement rates and Medicaid enrollee’s access to care. A 2015 study published in The New England Journal of Medicine found that increasing primary care reimbursement rates led to an increase in the number of available new-patient appointments for Medicaid enrollees. Similarly, research conducted in the state of Virginia found that “increasing Medicaid rates appears to have positive impacts on provider participation and access to care.” While we clearly believe in the value of Medicaid as the essential foundation of the health care safety net, the program can only achieve its full promise by ensuring that Medicaid enrollees have the same access to high-quality care as those covered by Medicare and private insurance. Anything less undermines the intent of the Medicaid program, and threatens Medicaid enrollees’ ability to maintain their health through receiving both primary care and specialty care services.

While the Supreme Court has ruled that providers do not have standing to sue states to enforce Section (30)(A), the power to ensure equal access to care for Medicaid enrollees is firmly in your hands. The dissenting decision of four justices in the Armstrong case notes, “[t]he Court’s error today has very real consequences. Previously, a State that set reimbursement rates so low that providers were unwilling to furnish a covered service for those who need it could be compelled

by those affected to respect the obligation imposed by §30(A). Now, it must suffice that a federal agency...has authority to address such violations through the drastic and often counterproductive measure of withholding the funds that pay for such services.”¹¹ Effectively, the dissent said that only CMS has the authority to enforce federal Medicaid statute in this area.

We look forward to discussing this vital issue with you in the future. Please contact Nevena Minor with the American Congress of Obstetricians and Gynecologists at 202-314-2322 or nminor@acog.org if you have any questions.

Sincerely,

American Academy of Pediatrics
American Congress of Obstetricians and Gynecologists
American Dental Association
American Health Care Association
America’s Essential Hospitals
The Jewish Federations of North America
National Association of Pediatric Nurse Practitioners
National Council for Behavioral Health
National Health Care for the Homeless Council

CC: Vikki Wachino, Director, Center for Medicaid and CHIP Services