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MEDICAID ACCESS REGULATIONS

HCBS PAYMENT ADEQUACY

Under the proposed Medicaid Access rule, the Centers for Medicare & Medicaid Services (CMS) proposes to enforce a nationwide Medicaid pass-through requirement, despite a lack of evidence supporting the proposal. The rule would require that at least 80% of all home and community-based services (HCBS) Medicaid payments are spent on compensation to direct care workers—specifically homemaker services, home health aide services, and personal care services.

Urge CMS to withdraw this provision from their Medicaid Access rule.

KEY CONCERNS

- **This provision will reduce, not increase, access.** Individuals who rely on HCBS to live in home-based settings will lose services, particularly if providers cannot meet these new requirements or are forced to restrict innovative, value-added care supports.
- The provision appears to have been **arbitrarily created and not based on data** or an explained rationale.
- The restrictive threshold definitions will limit resources for caregiver support and other enhanced care-focused operations, resulting in **reduced quality, health and safety, and oversight** in HCBS.
- The blanket approach undermines state autonomy, **creates stark inequities** across and within states, limits the ability to modify program requirements, and **penalizes providers and states that have more regulation and oversight.**
- **Smaller providers will be impacted the most,** including rural and culturally specific companies, further exacerbating the stark access challenges their clients face.
- The provision **seeks to establish a precedent** that CMS/HHS has the authority to dictate how state Medicaid dollars are spent by private entities.
- CMS imposes this mandate with **no existing or planned infrastructure** for collecting and reporting out accurate information, financing to support added resource needs, or data to ensure that the dollars are being distributed as intended.

BACKGROUND

CMS proposes to require that no less than 80% of all Medicaid payments, including but not limited to base payments and supplemental payments, be spent on compensation to direct care workers, homemaker services, home health aide services, and personal care services. This requirement would

apply to services delivered under sections 1915 (c), (i), (j), (k), and potentially also 1115 of the Social Security Act as well as those delivered through managed care contracts. Notably, it would not apply to 1905 (a) State plan personal care and home health services.

The rule would define "compensation" narrowly as:

- Salary and wages
- Benefits (health and dental, sick leave, tuition reimbursement, etc.)
- Employer share of payroll taxes for direct care workers
- Other remuneration as defined by the Fair Labor Standards Act

Importantly, the rule's definition neglects to include training, background checks, worker's compensation, mileage reimbursement, and other related costs for workers. It also explicitly excludes nurses in supervisory or administrative roles who are not directly providing HCBS.

The definition of "direct care worker" specifically includes:

- Nurses (RNs, LPNs, NPs, Clinical Nurse Specialists)
- Licensed or certified nursing assistants
- Direct support professionals and personal care attendants
- Home health aides
- "Other individuals" paid to directly provide Medicaid services that address activities of daily living (ADLs), instrumental activities of daily living (IADLs), behavioral supports, employment supports, or other community integration services

SOLUTION

Prior to considering care or compensation thresholds, Congress should act to provide additional support to states to enhance Medicaid reimbursement rates for HCBS services, which will lead to greater patient access and increased wages and benefits for caregivers.