Medicaid Access Proposed Rule: State Concerns with HCBS 80 Percent Direct Care Compensation Proposal

Overview

Medicaid Home and Community-Based Services (HCBS) offer essential state and federally funded services to help Medicaid enrollees with complex care needs get the supports they need to continue living in their homes in lieu of institutional settings. States elect the HCBS services offered, establish eligibility criteria, set rates for care providers, and generally manage their HCBS programs.

The Centers for Medicare and Medicaid Services (CMS) recently issued the *Medicaid Program: Ensuring Access to Medicaid Services* proposed rule ("Medicaid Access Rule"), which includes a proposal to require that states ensure at least 80 percent of all Medicaid HCBS payments are spent on compensation for direct care workers, such as nurses, home health aides, and others who directly support Medicaid beneficiaries in activities of daily living at home. The remaining 20 percent of payments would be expected to cover all other HCBS operating expenses.

Several states have expressed serious concern with the 80 percent direct compensation proposal, citing lack of data from CMS to support and implement the proposal, potential exacerbation of existing workforce shortage issues especially in small and rural communities, adverse impacts on affordability, and lack of agency authority to implement the policy, amongst other issues. Below are excerpts from several states and associations who submitted comments to urging CMS to not go forward with the proposal. To see your state comment letter, CLICK HERE.

Excerpts from State Comments

California Department of Health Care Services

*"… **we urge CMS not to hastily adopt a new mandate with such far-reaching implications without providing states adequate time and opportunity to fully assess the impact of said mandate on Medicaid costs and beneficiary access to care…we are highly concerned about unintended short-term impacts to the provider market and to costs and beneficiary access to care.**"*

Colorado Department of Health Care Policy & Financing

*"**Collecting this information is very difficult, bordering on non-feasible**, unless pre-existing sectoral bargaining agreements are in place. Most states, as a practice, do not receive that level of accounting/fiscal information on private businesses. Auditing these numbers as a baseline process illustrates the significant administrative burden it would place on state Medicaid agencies…By creating a blanket requirement, irrespective of existing Medicaid rates, service delivery model(s), provider capacity, geography, and existing market situations (including inflation and lagging job recruitment), **current CMS action will have devastating impacts on HCBS members in Colorado**."*

Alaska, Louisiana, Michigan, Missouri, Tennessee and Vermont State Agencies (joint letter via Brown & Peisch)

*"… **the 80 percent requirement will make impossible some of the strategies that knowledgeable partners have identified as critical to addressing the shortage** (e.g., increased training opportunities and career ladders). The myopic focus on payment rates is thus not only unlikely to solve the problem, but threatens to make these critical programs so expensive that **States will need to seriously consider controlling costs by serving fewer people, growing more slowly, providing fewer services, or cutting back on other aspects of the Medicaid program."***

New Hampshire Department of Health and Human Services

*"It is not clear why these services [home care, home health, homemaker} were targeted…The development of the proposed 80% threshold is not supported in the proposed rule, nor is it clear how this percentage was determined. **Labor market and wage index factors utilized in Medicare suggest a single standard would likely be problematic… With workforce challenges, the increased regulations in this requirement may result in a decrease of agencies willing to provide HCBS services through NH Medicaid.***

Oregon Department of Human Services

*"Additional time is needed to assess and accurately implement this change, **especially with the state's unique use of the 1915(k) authority for its HCBS long-term care system and current workforce shortage and in rural areas**. Rather than setting a national standard through this rule, **Oregon recommends beginning with transparency and reporting requirements** and developing a national standard and exceptions process in collaboration with states."*

Tennessee Department of Finance & Administration, Division of TennCare

*"…the most immediate and obvious result of the rule, if finalized, will be to **limit** the agencies available to provide HCBS to Medicaid beneficiaries to those agencies that can afford to spend less than 20 percent of their revenue on administrative costs. In particular, **we expect new agencies, as well as small agencies in remote or rural areas to be disproportionality impacted by the rule, which will exacerbate access issues in communities where provider shortages are already most acute**."*

National Association of Medicaid Directors (NAMD)

*"Some Medicaid agencies, as noted above, are concerned about the unintended consequences for providers of this policy. **Lack of familiarity and resources to produce cost reports would disproportionately impact smaller providers and may lead to lower overall provider availability for critical Medicaid HCBS**. It is also unclear what the remedy is for providers that are not able to comply with the pass-through requirement – and it clearly should not be terminating a non-compliant agency, as that would exacerbate shortages."*

Potential Impacts

The Partnership for Medicaid Home-Based Care Found that if the 80/20 proposal is finalized:

- 35% of providers would narrow geographies served or service offerings
- Over 93% would be limited in taking on new referrals
- Over 90% of providers would face challenges in serving rural populations
- Providers indicated that the proposal would cause cuts to clinical oversight, training, and non-direct care staff

The Home Care Association of America found that If the 80/20 proposal is finalized:

- A majority of providers serving Medicaid beneficiaries would exit the Medicaid program and focus on other revenue sources
- Over 64% of providers would be reduced in their ability to provide services for underserved or primarily minority populations