

Medicaid Access Regulations: HCBS Payment Adequacy

Request:

Urge CMS to withdraw the HCBS payment adequacy provision from the Medicaid Access rule.

Key Concerns:

- This rule will reduce, not increase, access. If agencies cannot meet these new requirements, **people will lose services**
- CMS did **not use data** to create the threshold and it is unclear why it is set at 80%
- Restricting resources for program operations results in **reduced quality, health and safety, and oversight** in HCBS
- The blanket approach **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 that their clients face

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 for the following services: 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 requirement would be effective 4 years after the effective date of the Final Rule, or the first managed care plan contracting period that begins on or after 4 years following the effective date of the Final Rule.

The rule would define “compensation” as:

- Salary;
- Wages;
- Other remuneration as defined by the Fair Labor Standards Act;
- Benefits (such as health and dental benefits, sick leave, and tuition reimbursement); and
- The employer share of payroll taxes for direct care workers.

The definition of direct care worker specifically includes:

- Nurses (RNs, LPNs, NPs, Clinical Nurse Specialists);
- Licensed or certified nursing assistants;
- Direct support professionals;
- Personal care attendants;
- Home health aides;
- “Other individuals” paid to directly provide Medicaid services that address ADLs/IADLs, behavioral supports, employment supports, or other community integration services.

The rule’s definition does not 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.