

# Medicaid Access Rule: 80/20

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# Medicaid Access Final Rule



# Medicaid Access Rule

- ▶ Final rule published on April 22, 2024
- ▶ 80/20 Provision: Requires that states ensure at least 80% of all Medicaid HCBS payments are spent on compensation for direct care workers, such as nurses, home health aides, and others who assist Medicaid beneficiaries with ADLs.
- ▶ The remaining 20% of payments would be expected to cover all other HCBS operating expenses.

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▷ Key changes in the final rule:

1. The implementation window was increased from four years to six years
2. Nurse supervision costs are now included in the 80% calculation
3. Certain costs were **excluded** from the 80/20 calculation
  - Costs of required trainings for direct care workers (such as costs for qualified trainers and training materials),
  - Travel costs for direct care workers (such as mileage reimbursement or public transportation subsidies), and
  - Costs of personal protective equipment for direct care workers.

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- ▶ *Example:* If a provider received \$100,000 in revenue from HCBS Medicaid and spent \$5,000 for training, PPE, travel costs, and other excluded expenses, under the final rule, that provider would exclude the \$5,000 from the \$100,000 in revenue for the 80/20 calculation.
- ▶ Therefore, \$95,000 would be used to determine the 80/20 ratio, resulting in \$76,000 reserved for wages and \$19,000 for all other administrative costs.

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## What We've Done

- ▶ Partnered with NAHC for our comments (75 pages) when the proposed rule was originally published by CMS on May 3, 2023.
- ▶ Focus: Opposition to the 80/20 provision (we supported other provisions such as payment rate transparency and quality measures)
- ▶ Met with CMS Administrator Chiquita Brooks-LaSure
- ▶ Met with President's Special Assistant for Health Care
- ▶ Met with the Senate Special Committee on Aging

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## What We've Done

- ▶ Met with the Office of Management and Budget (OMB) on February 27, 2024 (CMS representatives joined the meeting)
- ▶ We coordinated with NAHC, who met with OMB on February 26, 2024, to ensure consistency of messaging
- ▶ Continued to educate Members of Congress about the 80/20 provision during the HCAOA National Home Care Advocacy Day (April 17<sup>th</sup>)

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## HCAOA's Position

▷ Providing three key arguments:

1. The 80/20 provision prescribes how we may use current Medicaid funding rather than addressing the real workforce problem: the inadequacy of the rates themselves. They are far too low and leave us no leeway already. Encouraging states to **increase** the reimbursement rates and offering an enhanced FMAP is the most effective and efficient way to raise direct care worker (DCW) wages.



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## HCAOA's Position

### ▷ Three key arguments (continued):

2. Restricting costs and prescribing rates at 80/20 would contradict many of the quality measure efforts that we actively support in the proposed rule. This is a time when the industry needs more support and more innovation, not less funding and more regulation.

3. The negative impacts to patient access nationally will be swift and severe. Most providers will curtail services, while many will leave the Medicaid space entirely. The 80/20 provision will only serve to **reduce** access, contradicting the purported goal of the proposed rule.

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## HCAOA's Position

### ▶ Workforce impact argument:

We cannot hire enough caregivers as it is. While the Administration is attempting to assist in this shortage, the imposition of this rule will only serve to further hamper our efforts to recruit and retain the caregiving workforce Americans rely on and deserve because this significant rule will force providers to cut the support that they currently pay for out of their own pockets: services such as certain types of training, career advancement, supervision, and oversight and recognition programs. These are the things that support a thriving workforce.

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## HCAOA's Position

- ▶ HCAOA supports CMS' efforts to improve access to HCBS services. Much of this rule represents a win for people, a win for outcomes, and a win for affordability.
  - States must report on the HCBS quality measure set. New measure set represents a significant and positive evolution away from the current HCBS quality system, which is largely an administrative and process exercise without true outcomes and quality metrics.
- ▶ Another place we see eye-to-eye with CMS is that compassionate and quality care workers are at the heart of the system - no care workers means no care being provided.
- ▶ That said, a rule mandating how reimbursement is allocated is deeply flawed for a few reasons.

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## HCAOA's Position

- ▶ **First**, every state, program, and community is different. Rural North Dakota is different than Los Angeles, and a rigid rule for the entire country might work in some areas but will be disastrous in others.
- ▶ **Second**, there is developing evidence that this mandate will drive some care providers, especially in rural locations, out of business. This has the exact opposite effect that CMS intends, and it would dramatically reduce care options for thousands of people and cost care providers their jobs.
- ▶ **Third**, there isn't any evidence indicating that this 80% wage mandate will help recruit and retain direct care workers.
- ▶ There remain questions about the legality of CMS directing payments.

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## HCAOA's Position

- ▶ At the end of the day, we want to explore every avenue to ensure that the industry is attracting and retaining the best care workers possible.
- ▶ A blanket, one-sized-fits-all rule is not the way to go.
- ▶ We will continue to work with CMS, our State Medicaid partners, and professional associations in shaping the CMS Access Rule to ensure it meets the needs of both providers and those who rely on our services every day.

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## Recent Happenings

- ▶ Recent Events and Next Steps
  - The House Committee on Energy and Commerce Subcommittee on Health held a hearing on April 30, 2024
    - Rep. Kat Cammack (R-FL-3) introduced **H.R.8114**, which would prohibit the implementation of the 80/20 provision
    - HCAOA provided a statement to the Subcommittee in support of H.R.8114
    - HCAOA submitted questions to the Subcommittee members

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## Recent Happenings

- ▶ During the hearing, Rep. Neal Dunn (R-FL-2), Rep. Diana Harshbarger (R-TN-1), and others:
  - Asked questions at the hearing about the feasibility of 80/20
    - Asked for the data and methodology for selecting the 80/20 ratio.
    - Raised questions regarding the efficacy of a one-size fits-all approach to a state-based Medicaid rubric

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## Recent Happenings

- ▶ It is possible that Senate Republicans will introduce a Congressional Review Act (CRA) resolution that would strike the entire Medicaid Access Rule
  - A CRA allows Congress to overturn rules issued by the Executive Branch by enacting a joint resolution of disapproval that would cancel the entire rule and prohibit the agency from issuing a rule that is substantially the same
  - A CRA resolution would strike the entire rule, including the 80/20 provision



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What can you do?

- ▶ Go to HCAOA's website and fill out our Advocacy Alert for H.R.8114
  - Give a voice to the industry as a constituent
  - Help educate members of Congress on the issue
  - Ask Members of Congress to co-sponsor this legislation
  - Articulate the previously mentioned reasons for opposing the 80/20

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What can you do?

- ▶ Be on the lookout for additional grassroots advocacy opportunities, both federal and state
  - There are opportunities to increase Medicaid rates on the state level, which represents the best solution for increasing wages
  - The HCAOA Georgia Chapter, along with other industries, supported increasing the Medicaid rates in the state and the Governor signed those increases into law earlier this month

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## Next Steps

- ▶ HCAOA and others in the industry-wide coalition are leading discussions with Attorney General offices at the state level
  - Litigation by the states to strike down the 80/20 provision is a distinct possibility
  - Once one state files, other states likely will follow suit
- ▶ Many States opposed the 80/20 provision in their formal comments when the Medicaid Access Rule was first introduced in 2023, including Alaska, California, Louisiana, Michigan, Missouri, and Tennessee



# Questions?

Thank you to our sponsor!

