Medicaid Access Regulations:
HCBS Payment Adequacy

Issue: Under the final Access Rule, CMS creates a Medicaid wage pass-through requirement despite lack of evidence supporting the proposal. The rule would require that at least 80% of all HCBS Medicaid payments be spent on compensation to direct care workers, specifically—homemaker services, home health aide services, and personal care services.

Request: Support H.R. 8114, filed by Rep. Kat Cammack (R-FL-3), to prevent CMS from finalizing the payment adequacy provision.

Key Concerns:

- **This provision will reduce, not increase, access**. Individuals who rely on HCBS to live their lives 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 serve to limit resources for caregiver support and other enhanced care-focused operations, resulting in **reduced quality, health and safety, and oversight**.
- 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.**
- The provision **seeks to establish 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 accurate information, financing to support added resource needs, or data to ensure that the dollars are being distributed as intended.

Current Status: On April 22, 2024, CMS finalized the Medicaid Access rule. Although the final rule had mitigations, including changes to the calculation for 80%, that reduce some of the burden on providers, it is still a misguided and troubling requirement. CMS seeks to impose arbitrary limits on spending for necessary administrative functions which are not supported by data or research. Furthermore, CMS intends to apply these requirements without statutory authority.

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 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 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 defines “compensation” as:

- Salary;
- Wages;
- “Other remuneration as defined by the Fair Labor Standards Act and implementing regulations”
- Benefits, such as:
    - health and dental benefits;
    - life and disability insurance;
    - paid leave;
    - retirement;
    - tuition reimbursement; and
    - The employer share of payroll taxes, specifically including FICA taxes, unemployment insurance, and worker compensation.

In the final rule, CMS excludes training, mileage reimbursement, and personal protective equipment from the calculation. It also reverses the proposed rule’s treatment of nurses in supervisory roles and now includes them in the 80% calculation.

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; and
- “Other individuals” paid to directly provide Medicaid services that address ADLs/IADLs, behavioral supports, employment supports, or other community integration services, including nurses and other staff providing clinical supervision.

We urge you to support H.R. 8114 to prevent this provision from being implemented and maintaining authority to manage Medicaid programs at the state level, as Congress has intended.