May 9, 2025

Russell T. Vought
Director, Office of Management and Budget
Attn: Office of Information and Regulatory Affairs (OIRA)
1725 17th Street, NW
Washington, DC 20503

RE: Response to Request for Information: Deregulation (Federal Register Docket No. 2025-06316)

Dear Mr. Vought,

On behalf of the Home Care Association of America (HCAOA), I submit this response to the Office of Management and Budget's (OMB) Request for Information on Deregulation. As a national organization representing thousands of home and community-based service (HCBS) providers, I appreciate the opportunity to identify regulations that hinder service delivery, create undue burdens, and unintentionally reduce access to care, particularly for older adults and individuals with disabilities. **In particular, we urge OMB to recommend that the Centers for Medicare & Medicaid Services (CMS) withdraw the "80/20 provision" included in the Medicaid Access Rule.**

Introduction to the 80/20 Provision

Among the most concerning recent regulatory developments is a Final Rule from CMS, issued under the Medicaid Access Rule (CMS-2442-F), which requires that at least 80% of Medicaid payments for personal care, homemaker, and home health aide services be spent on direct care worker (DCW) compensation. This "80/20 provision," codified in 42 CFR §441.302(k)(3)(i), aims to improve wages for direct care workers but does so by rigidly and unfairly constraining how provider agencies may allocate their reimbursements. Please click here to read the comments we submitted during the formal rulemaking process, which we feel is relevant and responsive to this request for information.

At first glance, this mandate appears to support frontline caregivers. In practice, however, it imposes a blunt and unworkable spending formula that threatens the operational sustainability of home care agencies and, in turn, jeopardizes the very workforce it seeks to support. We urge OMB to recommend that CMS withdraw this provision as part of its broader deregulatory agenda.

I. Why the 80/20 Provision Warrants Deregulatory Action

1. Lack of Statutory Authority and Policy Justification

CMS cites Section 1902(a)(30)(A) of the Social Security Act and Section 2402(a) of the Affordable Care Act as the legal basis for the 80/20 requirement. However, neither statute

authorizes a federal agency to impose post-payment spending mandates that override state discretion or dictate internal provider budgeting. Moreover, CMS has presented no empirical evidence or national data to support 80% as an appropriate or achievable threshold across diverse care settings. This lack of data does not comport with the Administrative Procedure Act (APA), which governs the process by which federal agencies develop and issue regulations.

a. APA Notice and Comment Requirements

Under the APA, an agency must publish a notice of proposed rulemaking that includes "either the terms or substance of the rule or a description of the subjects and issues involved."[1] The notice must "include sufficient detail on its content and basis in law to allow for meaningful and informed comment."[2] "[A]n agency cannot rest a rule on data that, in critical degree, is known only to the agency. The most critical factual material that is used to support the agency's position on review must have been made public in the proceeding and exposed to refutation."[3]

In the NPRM, CMS stated that the HCBS Payment Adequacy requirement was "based on feedback from States that have implemented similar requirements" and have reported to the agency that these requirements "have had their intended effect of ensuring that a sufficient portion of the payment for Medicaid HCBS goes to compensation for the direct care workforce."[4] CMS also stated that these "States have also indicated an 80 percent threshold is an appropriate threshold that takes into account the expected portion of payments that are necessary for provider administrative and other costs" and that "our research indicates that some States have successfully implemented other thresholds."[5] Notably missing from any materials provided by CMS was any information or data states have reported to CMS regarding similar policies, including the impact of these policies on HCBS provider agencies and whether these policies had their intended effect of attracting more workers to the direct care workforce and increasing access to care. CMS also did not make available its "research" indicating that these thresholds are sufficient to allow providers to meet their administrative and other costs.

2. Unintended Harm to Access and Equity

For many small and rural agencies, the 80/20 rule would force cutbacks to scheduling, compliance, and supervisory functions. In many cases, the rule will even drive agency closures. These losses would fall hardest on underserved communities, limiting access to in-home support and ultimately leading to greater reliance on institutional care.

[1] 5 U.S.C. § 553(b)(3).
[2] *Am. Med. Ass'n v. Reno*, 57 F.3d 1129, 1132 (D.C. Cir. 1995).
[3] *Shands Jacksonville Med. Ctr. v. Burwell*, 139 F. Supp. 3d 240, 262 (D.D.C. 2015).
[4] 88 Fed. Reg. 27983-27984.
[5] *Id*. at 27984.

3. The Rule Mischaracterizes Administrative Costs

CMS's framework implies that all non-wage spending is "overhead" and therefore expendable. But functions like Electronic Visit Verification (EVV), nurse oversight, intake coordination, and grievance tracking are vital for maintaining quality, safety, and are required for regulatory compliance. Many are also federally mandated, creating a catch-22 where providers must either break the 80/20 rule or violate other program requirements.

4. The Provision Conflicts with Other Federal Mandates

CMS is simultaneously requiring agencies to develop quality measurement systems, improve incident reporting, and broaden beneficiary engagement. These functions require administrative investment. Imposing a rigid 80% wage floor while expanding non-wage responsibilities demonstrates a fundamental disconnect in federal policy.

5. No Consideration for State Rate Models or Regional Variability

A review of rate models from states like South Dakota, Oregon, Maine, and Virginia reveals that none meet the 80/20 threshold under current funding levels. Reaching this target would require either substantial reimbursement increases or deep cuts to essential services. States have long operated with flexibility to develop rates suited to their workforce, geography, and service models. The 80/20 rule disrupts this balance.

II. Constructive Alternatives to the 80/20 Rule

We support the goals of raising wages and improving worker stability—but through incentive-based and flexible regulatory approaches, not arbitrary mandates. OMB should encourage CMS to:

- Require transparency in how states set HCBS rates, including cost model assumptions and wage benchmarks;
- Promote state advisory groups with provider and worker representation;
- Collect national data on actual provider expenditures before enacting mandates;
- Provide targeted financial incentives to states that increase DCW wages through funding enhancements rather than internal reallocation.

III. Conclusion

The 80/20 provision represents a well-intentioned but dangerously flawed approach to workforce policy. It threatens to destabilize the home care system, reduce access to care, and penalize providers for fulfilling federally required administrative functions. We strongly recommend that OMB include this rule in its review of burdensome regulations and work with CMS to withdraw it.

We stand ready to support OMB's efforts to identify smart, targeted deregulation that strengthens home care and improves outcomes for beneficiaries, workers, and families alike.

Sincerely,

Jason Lee
CEO
Home Care Association of America