

Centers for Medicare and Medicaid Services Released Two Final Rules Impacting Intellectual and Developmental Disability Services Providers

The American Health Care Association/National Center for Assisted Living (AHCA/NCAL) and our member providers advocate for the continuing vitality of the intellectual and developmental disability (ID/DD) services provider community. We are committed to developing and advocating for public policies which balance economic and regulatory principles to support quality of care and quality of life.

On April 22, 2024, the Centers for Medicare and Medicaid Services (CMS) released two final rules that impact ID/DD service providers. **We are concerned on these overall unfunded mandates and support any policies and flexibilities that could provide relief to our ID/DD providers** that are facing, amongst other challenges, historic workforce shortages and Medicaid reimbursement issues that too often fail to fully cover the cost of needed care.

Nursing Home Minimum Staffing Final Rule

CMS finalized new regulations at 42 CFR 442.43 (with a cross-reference at 42 CFR 438.72) to require that State Medicaid agencies report on the percent of payments for Medicaid-covered services in intermediate care facilities for individuals with intellectual or developmental disabilities (ICFs/IID) that are spent on compensation for direct care workers and support staff. This requirement ties in with the payment and quality provisions of the home and community-based services rule included below. As finalized, States will have to comply with these requirements beginning 4 years from the effective date of this final rule. Simply put, reporting requirements will be a costly and burdensome requirement for ICF providers that are already stretched thin. The rule also failed to address inadequate Medicaid reimbursement rates.

Additionally, while the minimum staffing standards being proposed in this rule do not apply directly to ICFs, ICF providers are concerned that long-term care facilities struggling to meet the minimum standards will entice current and potential nurses and direct care staff away from providing services in ICFs. As previously noted, ICFs are facing a workforce crisis and already are taking drastic actions such as not accepting new residents, closing homes or only caring for those with low care needs. With no new workers, and a declining working-age population, enacting minimum staffing requirements on one sector of long-term care will negatively impact the ability for other sectors of long-term care, including ICFs, to meet the needs of those they support.

Home and Community Based Services (HCBS) Ensuring Access to Medicaid Services Final Rule

While we appreciate CMS' intent to increase access and improve quality in home and community-based settings, we are concerned that this final rule may inadvertently do the exact opposite. We ardently support increasing wages for direct care workers but mandating that a certain percentage of Medicaid reimbursement be allocated to wages does not address the core problem of Medicaid being underfunded.

This is especially true for HCBS, including services for individuals with ID/DD, where Medicaid does not cover room and board. This policy may have unintended consequences, such as driving providers out of the Medicaid program or passing along increasing costs onto private-pay residents, when we should be working on ways to make long term care more affordable and accessible. There is a wide variability of HCBS programs across states, and AHCA/NCAL will continue to evaluate the impact of this final rule on ID/DD residents and the providers that care for them.

More specifically, this final rule has several unfunded quality initiatives, which include:

- Creating a Medicaid Advisory Committee (MAC) and Beneficiary Advisory Council (BAC);
- Creating grievance systems and incident management systems;
- Reporting requirements on a HCBS quality measure sets (mandatory and voluntary measures previously outlined by CMS); and
- Transparency on website information and payment rates.

Additionally, the rule outlines HCBS Payment Adequacy, a section that requires providers to pay 80 percent of reimbursement for homemaker, home health aide, and personal care services for employee wages. Because all states have a different methodology for reimbursement, there is no consistency on how this will impact the workforce and there is no data or research to support this is an adequate workforce solution for recruitment or retention.

Once finalized in the Federal Register on May 10, each state will need to find ways to operationalize and implement this CMS Rule. Providers will take the lead from their state agency who administers the HCBS waivers. As was evident with the HCBS Setting Rule, implementation will vary across all states.



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