Proposed CMS Rule Could Have Significant Impact On HCBS Providers

The Centers for Medicare and Medicaid Services (CMS) recently released a proposed rule, Ensuring Access to Medicaid Services (CMS 2442-P), which among other modifications, seeks to improve access and quality for Medicaid enrollees receiving home and community-based services (HCBS). The proposed rule includes new requirements for state Medicaid programs and HCBS providers that service vulnerable populations, including older adults and people with intellectual and developmental disabilities. These providers offer critical and popular services, such as home habilitation and personal care services. In 2020, HCBS spend was $116 billion for more than 3 million individuals through waiver programs alone.[1] This proposed rule could have varying impacts across HCBS providers, state Medicaid programs, managed care organizations (MCOs), and individuals served within these settings.

This fact sheet focuses on HCBS providers but acknowledges the impact these rules will have both on state Medicaid programs as well as MCOs that administer these benefits on their behalf.

What Are the Notable Proposed Changes?

Among other broader program changes and requirements, the proposed rule's provisions that could have the most notable impacts to HCBS provider organizations include the following:

- **States must reassess functional need annually** for at least 90% of continuously enrolled individuals. This includes reviewing and revising person-centered plans annually.
- **States must establish grievance systems with requirements for identifying and tracking "critical incidents"** for enrollees dissatisfied with the level of service.
- **A required 80% of payments for home health aide services, personal care services, and homemaker services must be spent on direct compensation** for direct care workers.
- **A standardized set of quality metrics for HCBS services**, building off a 2022 Quality Measure Set. The proposed rule would also establish performance targets for each.
- **States must establish and report on a waiting list for HCBS-eligible individuals** who are seeking care, in addition to other baseline program reporting requirements.

What This Means for HCBS Organizations

These proposed changes could have varying effects on HCBS providers and stakeholders. Even within the proposed rule, CMS acknowledges several open questions and considerations that are still under evaluation. Various organizations, including the National Organization of Medicaid Directors and the National Association of State Directors of Developmental Disabilities Services, have requested an extension to the CMS comment period, which currently ends on July 3, 2023, given the proposed rule's complexity and current focus on the recently restarted Medicaid redetermination process.

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Summary of Proposed Changes and Potential Impact to HCBS Providers

PROPOSED CHANGE	ANTICIPATED LEVEL OF IMPACT	SOURCE OF IMPACT
Functional need reassessment	**Moderate**	While already required in many states at some level, this standard requirement at the 90% level could place downward pressure on patient volumes due to the increased administrative burden to continuously prove eligibility.
Grievance and incident tracking	**Low**	There will be a limited patient perception impact, and it is likely to disproportionately affect organizations with lower quality. In addition, grievance tracking only applies to fee-for-service population.
Medical spend floor	**High**	Setting an explicit floor for Medicaid payments on direct patient care may result in margin compression for HCBS providers (e.g., Addus had personal care services gross margins of 26.3% in FY22,[2] implying a margin downward pressure of 6%). CMS is seeking feedback on what services to include for this requirement, with the current proposed rule excluding services to individuals with intellectual or development disabilities due to the indirect costs necessary for these types of residential-based services.
Quality reporting	**Moderate**	Quality reporting may require increased compliance costs. However, like many under-reported healthcare sectors (e.g., ABA Therapy), we anticipate this to reward scaled operators that deliver consistent and high-quality care. These measures could also move the needle further for HCBS providers with readiness for alternative payment models.
Program reporting	**Low**	Programmatic reporting may incentivize states to reduce waitlists and reward programs that can address need, rewarding scaled operators. However, this burden largely falls on the state, not care providers.

What Provider Organizations Need to Do Now

How to Prepare for the Final Rule

This is not a watershed moment for HCBS, but it does represent one of the more significant programmatic proposed changes in recent memory, both in its size and scope. The push for CMS to explicitly mandate medical spend floors for HCBS providers (akin to Medicare Advantage) is a greater reach than we have seen previously at the federal level. Today, HCBS operators can do the following:

- Strengthen the organization's government relations efforts to advocate both during the comment period and more broadly for more substantive reimbursement rate increases, engaging both federal and state decision-makers on this important sustainability challenge.
- Get ahead of the proposed administrative requirements around functional need reassessment and quality reporting. Review the HCBS quality measure set to understand how your organization may begin to track these metrics and how your organization may perform once tracked.
- Understand exposure to the proposed medical spend floor and begin to identify ways your organization can ensure compliance at varying thresholds while minimizing overall impact.

Are You Ready?

We can help. Contact us to learn more about how we partner with HCBS providers, MCOs, and investors to identify and implement financial and operational strategies to both comply and drive greater growth under the new regulatory framework.

Authors

Nicholas Herro
Principal
nherro@chartis.com

Bethany Richmond
Director, Payer Advisory
brichmond@chartis.com

Sources

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2. Addus Homecare Corp. Form 10-K 2022. https://addus.gcs-web.com/static-files/b7692c63-a474-4fb8-ab10-41b08a486add

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