PARTNERSHIP FOR MEDICAID HOME-BASED CARE

The Partnership for Medicaid Home-Based Care (PMHC) is providing this letter format for provider and state members to comment on the **Medicaid Program; Ensuring Access to Medicaid Services** proposed rule. For more information on instructions to submit and about the proposed rule, please see below.

Comments are due by July 3, 2023.

Address your comment letter to:
Chiquita Brooks-LaSure, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–2442-P
P.O. Box 8010
Baltimore, MD 21244–1850

Comments must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. The rule number is CMS-2442-P. **Click here to quickly and efficiently comment on the official Regulations.gov website** – you can either upload a document or insert text.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2442–P, P.O. Box 8016, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2442–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

PROPOSED MEDICAID ACCESS RULE

On May 3, 2023 the Centers for Medicare & Medicaid Services (CMS) published the proposed rule, Medicaid Program: Ensuring Access to Medicaid Services. This proposed rule is intended to advance CMS's efforts to improve access to care, quality, and health outcomes, and better promote health equity for Medicaid beneficiaries including for home and community-based services.

The Social Security Act includes an "equal access provision" which requires that state Medicaid provider payments are "consistent with the efficiency, economy and quality of care… sufficient enough to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in a geographic area." This statutory provision was not regulated for decades until 2015, when the Obama Administration finalized regulations requiring states to report on certain Medicaid services and payment structures. The 2015 rule did not include Medicaid home and community-based services (HCBS) in the initial regulations. This latest proposed rule is the second attempt to regulate the equal access provision and now does cover HCBS services.

Proposal – Concerns and Positives

- **CONCERN:** While several recommendations below are in line with the equal access provision and are positive policy developments, PMHC is alarmed about a specific proposal for states to require that at least **80 percent of all Medicaid payments**, be spent on compensation to direct care workers for homemaker, home health and personal care services. PMHC urges CMS to withdraw this specific threshold proposal and consider alternative approaches to raise worker wages, for the following reasons:
    - This proposal is not accompanied by any data to justify a threshold and only cites two states who have done somewhat similar but lesser threshold requirements.
    - This proposal does not acknowledge the uniqueness of HCBS waivers - not one of over 300 HCBS waivers in the country are identical with regard to the population served, services provided, staff required to provide the service, and rate reimbursed.
    - This proposed mandate lacks acknowledgment of provider costs including transportation (particularly in rural areas), training, licensing, facility, and numerous other overhead costs.
    - This proposal appears to violate the purpose of the equal access provision by stressing the system and putting the network of providers in jeopardy, particularly those that serve rural and underserved populations.
    - CMS predicts that upwards of 12,000 HCBS providers will be impacted by this proposal.
- **POSITIVE:** In rescinding the 2015 final rule reporting requirements, CMS instead proposes new state reporting requirements and would for the first time include certain HCBS programs in those requirements for transparency, reporting, and advisement from stakeholders on reimbursement rates.
- **POSITIVE:** CMS proposes to create an HCBS grievance system and incident management system.
- **POSITIVE:** CMS proposes standard reporting requirements for waiting lists including PMHC recommendation of time between approval of service and actual start of service.