CLIENT ALERT: ENSURING ACCESS TO MEDICAID SERVICES

CMS Proposed Rule: Section B. Home and Community-Based Services (CMS 2442-P)

In the proposed rule, CMS identifies the desired initiatives to amend and add federal requirements related to home and community-based services (HCBS) programs. These proposals were released in an attempt to improve access to care, improve the quality of care, and improve the health and quality-of-life outcomes for HCBS beneficiaries. These proposals would affect services provided under 1915(c) waiver programs and state plan services included in sections 1915(i), (j), and (k). These requirements would also apply to 1115 demonstration project services, unless specifically waived.

Should the rule be finalized, Myers and Stauffer will work directly with each of our clients to determine the most efficient way to meet reporting requirements and evaluate payment adequacy.

Reporting (§§ 441.302(h) and 441.311)

This proposed rule establishes new consolidated reporting requirements for states related to HCBS programs. The reporting requirements would start three years after the effective date of the final rule for fee-for-service (FFS) systems. For any services delivered through a managed care plan, the rule proposes that the effective date will be three years after the first managed care plan contract rating period that starts on or after three years after the effective rate of the final rule. If the rule is finalized, CMS stated it would establish new reporting processes and forms to assist states in meeting the new requirements. This includes providing additional technical guidance.

States will be required to report the following information:

- **Incident Management System Assessment:** Every other year, states will be required to provide an assessment of the Incident Management System. This includes a demonstration of the state's ability to "operate and maintain an incident management system that identifies, reports, triages, investigates, resolves, tracks, and trends critical incidents."
- **Critical Incidents:** Annual reporting on the number and percent of critical incidents that resulted in the initiation of an investigation.
- **Person-Centered Planning:** States will report annually on the percentage of beneficiaries continuously enrolled in HCBS services for a minimum of 365 days who had functional-needs reassessments performed within the last 12 months. The rule proposes allowance of this reporting on a random sample of individuals who meet the 365-day minimum of continuous enrollment.

- **Type, Amount, and Cost of Services:** States will continue to report annually on the type, amount, and costs of services. This requirement has not changed, but will be included as part of the consolidated reporting requirements.
- **HCBS Quality Measure Sets:** States will be asked to report information in a prescribed format for the HCBS Quality Measure Set every other year. This includes reporting on the mandatory quality item sets and any additional quality measures states have identified as part of their quality-improvement strategy.
- **Access to Services:** The rule proposed to have states report on access to homemaker, home health aide, and personal care services. This will require states to be more transparent regarding waiting lists for these services. This reporting will be required on an annual basis and should identify the average length of time from when an individual is approved for services and when services begin. States will be allowed to report on a random sample of newly approved (i.e., approved in the last 12 months) individuals for these services.
- **Payment Adequacy:** States will be required to report the percent of total Medicaid payments that represent payments relayed to the direct-care workforce. This reporting would be provided on an annual basis for homemaker, home health aide, and personal care services. States will be required to report separately for each service and will also need to separately report on self-directed services. Information will be reported in the aggregate for each service across all programs, not for each waiver or HCBS program.

Payment Adequacy (§§ 441.302, 441.464(f), 441.570(f), and 441.745(a)(1)(vi))

States will continue to ensure that provider payments follow the requirements of Section 1902(a)(30)(A) of the Act, which requires payments to be "consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers…" to deliver services. In an effort to continue to provide access to homemaker, home health aide, and personal care services, the rule proposes that Medicaid state agencies demonstrate a minimum of 80 percent of all Medicaid payments are paid for direct-care worker compensation for these services. This will require states to collect information from service providers to identify what percentage of payments are used to compensate the direct care workers. It is proposed for this requirement to take effect four years after the rule is finalized, if implemented.

CMS defined compensation for direct-care workers to include any payments for, "salaries, wages, and other remuneration as defined by the Fair Labor Standards Act and implementing regulations…" and includes benefits that provide a financial benefit to the worker, such as health insurance or tuition reimbursement. Benefits also include any payroll taxes that are the responsibility of the employer.

Website Transparency (§§ 441.313, 441.486, 441.595, and 441.750)

States will be required to operate a website that will provide information in a clearly identified manner for each of the required reporting elements, as documented in § 441.311. The website should be easily accessible and contained within a single web page. This website must be implemented within three years following the effective date of the final rule for FFS systems and until the first managed care plan starts three years or later after the effective date of the final rule.

The proposed rule is open for comments until July 3, 2023. Formal comments can be submitted here.

FOR MORE INFORMATION

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