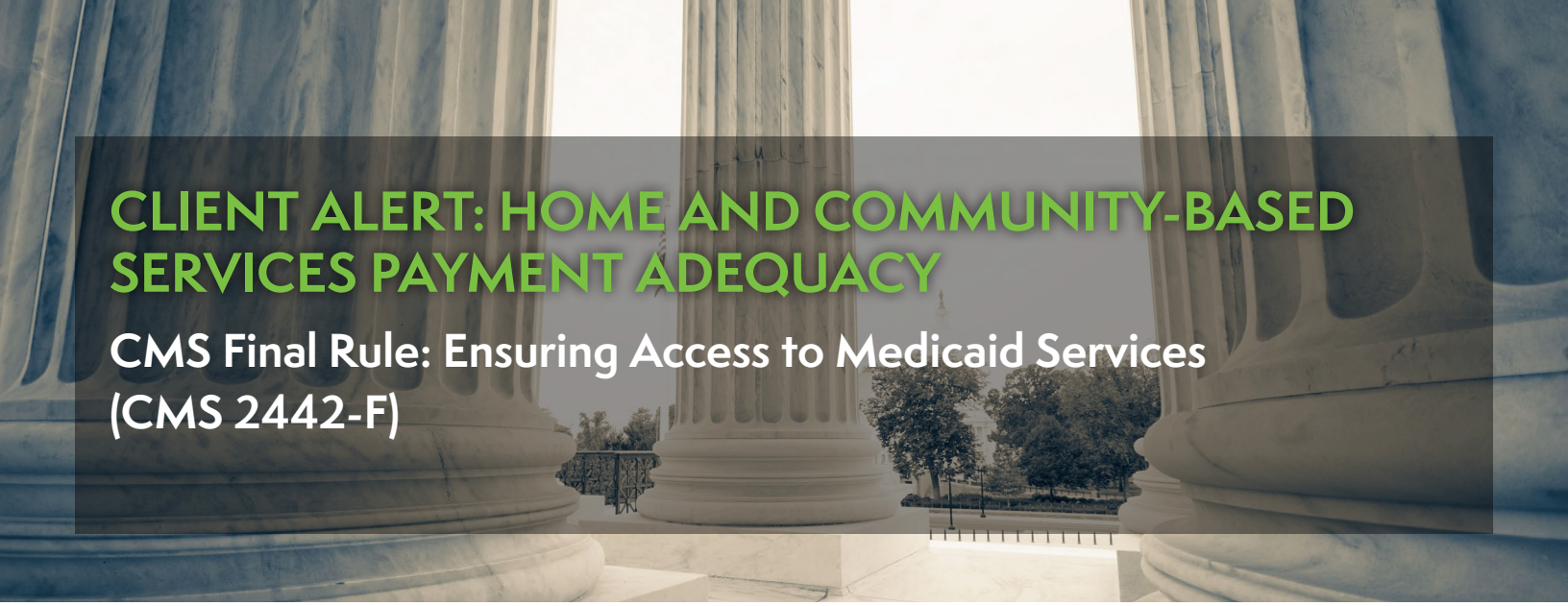

CLIENT ALERT: HOME AND COMMUNITY-BASED SERVICES PAYMENT ADEQUACY

CMS Final Rule: Ensuring Access to Medicaid Services (CMS 2442-F)

CMS identifies several home and community-based services (HCBS) program initiatives as part of the Ensuring Access to Medicaid final rule (Access Rule), released on May 10, 2024. The Access Rule is intended to improve access to care, quality of care, and health and quality-of-life outcomes for HCBS beneficiaries while increasing transparency and accountability. These requirements affect services provided under:

- 1915(c) waiver programs.
- State plan services under 1915(i), (j), and (k) authorities.
- 1115 demonstration project services, unless specifically waived.

The following is a summary of the new policy and program administration requirements related to payment adequacy and transparency for HCBS services, as included in the Access Rule.

HCBS Payment Adequacy (§ 441.302(k)) and Reporting (§ 441.311)

One component of ensuring adequate access to care is monitoring the adequacy of payment rates. Adequate rates help ensure a sufficient direct-care workforce to provide needed services. States must continue to ensure that provider payments follow the requirements of Section 1902(a)(30)(A) of the Social Security Act, requiring payments to be "consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers…" to deliver services. However, the Access Rule includes additional requirements for determining the adequacy of rates.

States will be required to report annually on the following:

- For homemaker, home health aide, and personal-care services, providers must demonstrate that at least 80 percent of the total payments they receive are spent on direct-care worker compensation.
  - States may elect to develop classification criteria for "small providers." States will be able to define the minimum percentage of total payments required to be spent on direct-care compensation for this subset of providers. States will report annually on the development of this requirement and the use of the small-provider minimum.
  - States have the option to develop hardship exemption metrics, allowing exceptions for providers from meeting the minimum percentage requirements. Exceptions would be for providers who are encountering extraordinary circumstances and cannot meet the minimum percentage requirements. States will be required to report annually on the development and use the hardship exemption.
  - The Access Rule provides exceptions to these requirements for services provided by Indian Health Services and Tribal health programs.

These requirements are applicable beginning six years after the Access Rule's effective date. If services are provided under managed care, reporting will start with the first rating period beginning on or after the date that is six years after the Access Rule's effective date.

Before demonstrating that payments for homemaker, home health aide, and personal-care services meet the payment percentages above, states will be required to report the percentage of direct-care compensation related to those services **plus** additional information associated with habilitation services. The information that will be required annually includes:

- Reporting the percentage of total payments, net of excluded costs, incurred on compensation for direct-care workers. Reporting will be made separately for services delivered in a physical location operated by the provider and for which the facility related costs are included in the reimbursement rate. CMS will specify the time and form of the reporting of these data.
  - Any of the above-referenced services administered under a self-directed model where the beneficiary sets the direct-care rate must be excluded from the payment data.
  - Any services provided through the Indian Health Service and Tribal health programs must be excluded from the reported data.

These reporting requirements will begin four years after the Access Rule's effective date, or in the case of a managed care delivery system, in the first rating period beginning on or after four years of the Access Rule's effective date. One year before the applicability of reporting these data, states will be required to demonstrate readiness to comply with this rule.

How Myers and Stauffer Can Support Your Programs

Myers and Stauffer recommends states act now to prepare for meeting the upcoming Access Rule reporting requirements. Our experienced team is available to assist with the following:

- Evaluating the adequacy of and recommending updates to current rate methodologies.
- Evaluating and/or validating provider cost data to identify direct-care worker compensation costs.
  - If these data are unavailable, Myers and Stauffer can assist with designing cost surveys to collect these data.
- Evaluating and/or monitoring payments made to providers.
- Calculating the current percentage of payments covering direct-care compensation to evaluate readiness for the 80 percent minimum requirements and/or state-defined minimum percentage of direct-care compensation for small providers. This applies to homemaker, home health aide, and personal-care services.
- Evaluating the percent of payments made to providers to cover direct-care compensation for habilitation services, in addition to evaluating the percent of payments made for direct-care compensation for home health aide, homemaker, and personal-care services.

We look forward to working with your State to support the implementation of the new Access Rule requirements.

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