



July 3, 2023

Ms. Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-2439-P  
P.O. Box 8016, Baltimore, MD 21244-8016

**Re: Medicaid Program; Ensuring Access to Medicaid Services, CMS-2442-P**

Dear Administrator Brooks-LaSure:

The Association for Behavioral Health and Wellness (ABHW) appreciates the opportunity to submit comments on the Centers for Medicare & Medicaid Services (CMS) Notice of Proposed Rulemaking (NPRM or proposed rule) for the Medicaid Program; Ensuring Access to Medicaid Services.

ABHW is the national voice for payers managing behavioral health insurance benefits. ABHW member companies provide coverage to approximately 200 million people in the public and private sectors to treat mental health (MH), substance use disorders (SUDs), and other behaviors that impact health and wellness.

Our organization aims to increase access, drive integration, support prevention, raise awareness, reduce stigma, and advance evidence-based treatment and quality outcomes. Furthermore, through our policy work, we strive to promote equal access to quality treatment and address the stark inequities created by systemic racism. We are deeply concerned about health disparities in MH and SUD services in this country and are committed to promoting health equity in the healthcare system.

This NPRM is intended to improve access and quality to Home and Community-Based Services (HCBS). ABHW encourages efforts that expand and promote allowing Medicaid beneficiaries to receive services in their own homes or community rather than in institutions or other isolated settings. However, the rigid HCBS 80% payment adequacy

provision will impede the care and delivery of behavioral health home and community-based supports. Please see more detail on the payment adequacy provision below.

## I. HCBS Payment Adequacy

This proposed rule requires state Medicaid agencies to demonstrate, via annual retrospective reporting, that Direct Care Worker (DCW) compensation represents at least 80% of the Medicaid payment for homemakers, home health aides, and personal care services. This provision would apply to fee-for-service (FFS), managed care, self-directed care, 1115 waivers, and through 1915(c), (j), (k), and (i) services.

While this provision is intended to address the DCW workforce shortage, it will impede quality and cause provider abrasion. Permitting only 20% of the rate for non-personnel costs does not account for expenses necessary to provide quality care. This may result in significant cuts to programmatic and quality improvement, reducing investments in technology, supervision and training, scheduling, data collection, and oversight. In order to strengthen access and improve quality, it is crucial to address payment adequacy comprehensively and in a manner that does not force states, providers, and health plans to remove these vital resources. Furthermore, a significant administrative burden will be placed on states and providers to support compliance with the payment adequacy reporting requirement.

**While the current proposal does not directly impact behavioral health services, ABHW is concerned that this HCBS payment adequacy provision will establish a precedent and eventually be applied to MH and SUD services impeding program quality and access. We encourage CMS to consider a more flexible approach that will significantly impact the direct care worker shortage.** This approach should consider the unique circumstances and diverse needs of providers across different regions. By tailoring the requirements to reflect the realities on the ground, we can better ensure sustainable access to high-quality services for all beneficiaries.

## Conclusion

Thank you for the opportunity to provide feedback on this proposed rule. We are committed to engaging with CMS and other partners on opportunities to improve behavioral health access and address the workforce crisis. If you have questions, please contact Kathryn Cohen, Senior Director of Regulatory Affairs, at [cohen@abhw.org](mailto:cohen@abhw.org).

Sincerely,



Pamela Greenberg, MPP  
President and CEO