



State Council on Developmental Disabilities



STATE OF CALIFORNIA
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The Centers for Medicare & Medicaid Services (CMS)
The Department of Health and Human Services (HHS)
Medicaid Program; Ensuring Access to Medicaid Services (CMS-2442-P)
CMS-2023-0070; 88 FR 27960

To Whom it May Concern:

Thank you for allowing the California State Council on Developmental Disabilities (SCDD) the opportunity to comment on proposed rule CMS–2442–P, regarding access to Medicaid Services for Home- and Community-Based Services (HCBS). These services are of vital importance to Californians with a disability, and this rule would increase the focus on the nature and quality of their experiences. Individuals should have an active role in the development of their plan, reflecting the individual service and supports important to them. These proposed requirements will increase transparency and accountability, standardize data and monitoring, and create opportunities for states to promote active beneficiary engagement in their Medicaid programs.

Among the new rules, a few specific areas of the proposed rule are welcome changes for better health and wellness outcomes for consumers:

Person-centered planning

Combined with the current Final Rule implementation, person-centered planning has been the goal for all settings for years. Because of the pandemic and other factors, this has been slow to full realization, and some half of all states are still not in compliance with the March 2023 date set by CMS. People are still living inside locked facilities; some have little choice in who they see or what they do in a given day; and some report not having a full right to dignity or privacy as the Final Rule requires.

Hopefully this new proposed rule, along with other current regulations, will spur action in all settings. Tying person-centered success to Medicaid funding is a great step. SCDD hopes that this rule will not take years of delays before full implementation - people are in unacceptable settings now, and they cannot wait for compliance to be bogged down by bureaucracy.

"The Council advocates, promotes & implements policies and practices that achieve self-determination, independence, productivity & inclusion in all aspects of community life for Californians with developmental disabilities and their families."

Funds for care workers

Every state faces a direct-care workforce shortage. The actual caretakers are the necessary component to support people to thrive in their communities. Without those care workers, many people will be unable to access the services they need. The proposed minimum spending percentage requirements, transparency in payment rates, and regular review of payment rates, all move us forward to spending the vast majority of available funds on the actual caretaking work for consumers. Being able to see where funds are going, how they're being spent, and demanding a high percentage to the direct-care workers are necessary for improved outcomes for people with a disability.

Waiting lists

Luckily, in California people with a developmental disability have a right to the supports and services they need. As such, we have no waiting lists for individuals to wait to receive those services. But for those states that do, making those waiting lists public and reviewable increases transparency, which is always good for those who need services. SCDD welcomes additional documentation and information sharing among states to see where the gaps are, and how each state tries to fill them to cover as many people as need care. Just as the full implementation of person-centered planning cannot wait, neither can reducing each wait list to zero, and the proposed rule's steps should work to reach that end.

Critical Incidents and Grievance Procedures

A good incident review system is necessary not only to protect individuals from potential harm, but also to review the incident data to see what can be done to prevent future harm. Again, California does have an incident management system, but it can be difficult to ascertain what exactly qualifies as an incident in that system. This proposed rule would provide a definition of a critical incident across all states, which will allow for greater analysis of what methods work to protect individuals in HCBS settings. The rule would also require each state to collect and standardize that data, and report results on investigation, grievances, and corrective actions related to critical incidents. Again, this cannot be implemented soon enough. The proposed rule allows each state two years to come into compliance. SCDD urges CMS to hold to that deadline, and not allow it to continue unnecessarily.

Quality measures

SCDD appreciates that the proposed rule will require HCBS to report on new quality measures as it does in other Medicaid services. Quality measures should include those issues that matter most to the individual, such as ensuring their person-centered plan is being followed and they are the key stakeholder. Mandating a set of quality targets that states must track and report will ensure individuals with disabilities can fully engage in their communities and live self-determined lives. This requirement too envisions a staggered two-year reporting timeline. These changes cannot be implemented soon enough.

The California State Council on Developmental Disabilities supports the proposed new rule Ensuring Access to Medicaid Services, and looks forward to working with CMS and our other state partners to continue a person-centered approach to improve the lives of Californians using Home or Community Based Services. Thank you again for the opportunity to comment on this important proposed regulation.

Sincerely,
/s/ Wesley Witherspoon
Chair
California State Council on Developmental Disabilities

/s/ Harold Ashe
Chair
SCDD Legislative and Public Policy Committee