



**June 29, 2023**

**The Honorable Chiquita Brooks-LaSure**

Administrator, Centers for Medicare and Medicaid Services  
P.O. Box 8016  
Baltimore, MD 21244-8016

**RE: CMS-1765-P**

**Dear Administrator Brooks-LaSure:**

As President and CEO of Lutheran Services in America, I appreciate the opportunity to submit comments on Proposed Rule CMS-2442-P, Medicaid Program; Ensuring Access to Medicaid Services. Lutheran Services in America is a national network of 300 Lutheran health and human services organizations that reaches one in 50 people living in America and has combined revenue of over \$23 billion. Lutheran social ministry organizations are deeply embedded in over 1,400 communities in 45 states across the country and have provided services for over 150 years.

**Importance of access to HCBS**

As providers of home and community-based services (HCBS), we know first-hand the importance of these services to millions of people with disabilities and older adults. As advocates for the people who use HCBS, we support the intent of the rule to increase access to HBCS through transparency and reduced waiting lists. As the primary payer of HCBS in the country, Medicaid plays a critical role in meeting the needs of individuals receiving long-term services and supports at home and in the community. Ensuring timely access to home and community-based services is essential to meeting the needs of Medicaid enrollees.

**Concerns about HCBS Payment Adequacy mandate**

However, the proposed new restriction that 80% of Medicaid reimbursement for personal care, home health aides and other direct service providers (DSPs) be spent on DSP compensation will have the opposite effect. This proposed restriction, which is not supported by data or experience, will negatively impact the ability of many providers to serve their communities, reduce investment for technology and innovation and result in some programs being diminished or closed, defeating the stated objectives of the rule. We urge CMS to support

regular rate reviews and competitive wages for DSPs within the current payment model, not mandate spending restrictions that would reduce access to HCBS.

Ensuring payment adequacy for the direct care workforce is especially important because, as CMS recognizes, inadequate compensation of direct care workers results in workforce shortages and instability that limit access to high quality HCBS for older adults and people with disabilities. As the primary payer of home- and community-based services, Medicaid has not fully met the costs of care for years, much less the significantly increased costs of care today with rising workforce and operating costs. Given the desperate need for more workers, providers are doing whatever they can to pay the highest possible wages to recruit and retain additional DSPs, and yet the workforce crisis persists. What is needed is not restrictions on how funding is spent, but rather higher reimbursements and increased support for recruitment and retention efforts. The mandated spending restrictions being proposed will impact access and quality of care, especially for smaller, rural providers, because they do not include the cost of transportation and travel time (which is much greater in rural areas,) as well as training, licensing, facility, and numerous other overhead costs. Further, in an industry in which margins are historically low, especially for smaller providers, the restriction leaves no funding to invest in innovation, advancements, growth, or improvements to services.

This proposal violates 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. 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.”

Finally, the across-the-board approach limits the local responsiveness and flexibility in spending inherent in the 300 unique HCBS waivers, ultimately reducing access to services. Currently, providers have the flexibility to spend their Medicaid payments in the way that best addresses the circumstances and the needs of the people they support. For example, a rural provider can spend additional funds on transportation as needed while another provider in a state with higher average wages could choose to spend more on DSP compensation. A one-size-fits-all approach would eliminate this flexibility, create stark inequities

across and within states, and limit the ability to modify program requirements. Quality and accessibility of HCBS services would depend even more on where someone lives than it does now.

We appreciate the opportunity to comment on this proposed rule. Considering the views and experiences of our network providers, we urge CMS to support regular rate reviews and competitive wages for DSPs within the current payment model, not mandate spending restrictions that would reduce access to HCBS. We welcome any additional opportunities to share our insights and ideas towards our common goal of improving access to HCBS.

**Sincerely,**

A handwritten signature in black ink that reads "Alesia Frerichs". The signature is written in a cursive, flowing style.

**Alesia Frerichs**  
**President and CEO**