September 28, 2021

Chiquita Brooks-LaSure, Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-2444-P
P.O. Box 8016
Baltimore, MD 21244-8016

RE: Reassignment of Medicaid Provider Claims
CMS-2444-P, ANCOR Written Comments

Dear Administrator Books-LaSure:

On behalf of the American Network of Community Options and Resources (ANCOR), thank you for the opportunity to provide feedback to the Centers for Medicare & Medicaid Services' (CMS) proposed rule impacting Reassignment of Medicaid Provider Claims. We greatly appreciate CMS' interest in addressing the home and community-based services (HCBS) workforce crisis and its direct and immediate impact on the quality of and access to services available to beneficiaries. However, we are concerned that the proposed rule does not target changes which make substantial impact on the workforce crisis as suggested in the intent and news release.

ANCOR is a national, nonprofit trade association representing more than 1,600 private providers of community-based services to people with intellectual and developmental disabilities (I/DD). Combined, we support over one million individuals with disabilities and work collaboratively to shape policy, share solutions, and strengthen community. Our members assist people with I/DD to live full and independent lives by providing services and support for instrumental activities of daily living. The Medicaid HCBS program is the heart of our efforts, as our members rely almost exclusively on Medicaid funding.

ANCOR offers the following comments, suggestions, and requests for clarification to the proposed rule. Our recommendations are framed to support uniformity in implementation with acknowledgment of the impact of the proposed rule on the current direct care workforce crisis. We have organized our feedback by section below, touching upon broad themes and specific recommendations that arose within those topics.

**Direct Care Workforce Crisis**

For decades, the United States has witnessed a significant shortage of direct care workers due to stagnant reimbursement rates and the inability of providers to offer wages that enable them to compete with industries offering even entry-level positions, such as fast-food restaurants or retail and convenience stores. The effects of underinvestment in the direct care workforce can be seen

in turnover rates which hover near 50 percent nationally. With the onset of COVID-19, new pressures and hazards of providing essential, close-contact services during the pandemic have further exacerbated and accelerated the workforce crisis. While many in the private sector pivoted by offering increased wages and hazard pay, community providers—who rely almost exclusively on Medicaid funding and are thus beholden to paying wages that Medicaid reimbursement rates will permit—lacked the resources to fund these kinds of unanticipated programmatic costs.

ANCOR surveyed community providers over a five-week period beginning in August 2021 to glean a deeper understanding of the impact of the COVID-19 pandemic on the direct care workforce crisis and, in turn, providers' ability to deliver the highest-quality supports possible. Survey results found that 77% of providers were turning away new referrals, 58% of providers were discontinuing programs and services, and 84% of providers were delaying the launch of new programs or services due to lack of staffing. Survey results further indicated that nearly 3 in 10 (29%) respondents reported spending more than $500,000 annually in costs related to high turnover and vacancy rates, while more than 1 in 6 respondents (18%) reported spending more than $1 million annually. Nearly all providers agreed that the COVID-19 pandemic continues to deeply impact their ability to hire and retain direct care workers.

These relentless challenges illustrate why increased funding for HCBS is critical to begin addressing the magnitude of unmet need in our communities. Without the full $400 billion promised in President Biden's Build Back Better proposal, procedural flexibilities provide only for small stopgap approaches without long-term solutions or sustainable infrastructure. While we remain grateful for any attention to the direct care workforce crisis, we urge CMS to focus attention on support for competitive wages and access requirements.

**Individual Practitioner and Home and Community-Based Services**

ANCOR requests further clarification to the term "individual practitioner" and the proposed rule's impact on the direct care workforce crisis.

*Definition*

The proposed rule appears limited to payments made to "individual practitioners."[1] While no further formal definition is proposed, this term appears to refer to Medicaid payments made to an individual providing services independently, rather than as an employee of a service provider. This would allow for third-party payment to be made on behalf of an individual, with that specific individual's consent, as the payment arrangement remains distinctly between the state Medicaid program and the individual providing services. This also appears confirmed in the decision not to prepare a regulatory relief of small entities analysis as "[i]ndividuals and states are not included in the definition of a small entity."[2]

However, the rationale relies heavily on broader data and citation to the direct care workforce as a whole in support of the proposed rule's intended impact to address stability in the direct care

[1] Proposed 42 CFR § 447.10(i)
[2] Part V. Regulatory Impact Analysis, C. Anticipated Effects

workforce.[3] In its news release, CMS indicated this rule would fulfill "a key promise made by President Biden on the campaign trail to support home care workers."[4] We are concerned that this assertion inaccurately describes the impact of the proposed rule on the entirety of the direct care workforce crisis. Though individual practitioners contribute to the direct care workforce, these workers currently comprise only a small subset of the direct care workforce supporting individuals with disabilities; the vast majority of direct care workers remain employed by service providers and those professionals' wages and benefits will remain unimpacted by the proposed rule.[5]

*Impact to Workforce Crisis*

Service providers receive payment through Medicaid-established rates, which typically reimburse for direct care wages and programmatic costs by unit with assumed staffing ratios. The nationwide direct care workforce crisis is directly attributable to providers' inability to maintain a workforce with stagnant reimbursement rates left unadjusted for inflation, rising costs, and increased industry standards for decades at a time. With limited resources, providers are forced to make cuts to programs, training, and quality standards to shift funding to meet a wage necessary to simply meet those minimum staffing ratios. Even so, at $12 per hour, the median wage for direct care workers nationally is simply insufficient to slow the exodus of direct care workers from the field.

As written, the rationale is clear that the rule would not authorize a state to claim a separate expenditure and, "[a]s a result, this proposed rule would have little to no impact on federal Medicaid funding levels."[6] Unfortunately, this is the focus that is sorely needed to truly address the direct care workforce crisis and meet CMS' stated intent to "help foster a stable and high-performing workforce."[7] Furthermore, by not allowing states to claim additional administrative costs to implement this proposed rule for a singular subsect of direct care workers, the proposed rule may have the unintended effect of further *reducing* reimbursement rates to cover the new state cost.

**Conclusion**

We fully embrace and agree with CMS' statement that "HCBS workforce issues, such as workforce shortages and staff turnover, have a direct and immediate impact on the quality of and access to services available to beneficiaries, and believe that state Medicaid agencies play a key

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[3] See references to Kaiser Family Foundation's analyses of *all* direct care workers and the American Rescue Plan Act's funding for *all* home and community-based services. Neither provides specific subset or findings related to independent practitioners.

[4] See CMS News Alert, dated July 30, 2021, *CMS Proposes Rule to Support Home Care Workers Access to Benefits*, https://www.cms.gov/newsroom/news-alert/cms-proposes-rule-support-home-care-workers-access-benefits.

[5] The 2017-2018 National Core Indicators In-Person Survey indicated only 13% of respondents utilizing home and community-based services participate in a self-directed support option which employs independent practitioners. See https://www.nationalcoreindicators.org/charts/2017-18/?i=19&st=undefined.

[6] Part II. Provisions of the Proposed Rule, B. Overall Impact

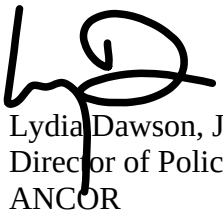
[7] Part II. Provisions of the Proposed Rule, A. Prohibition Against Reassignment of Provider Claims (§ 447.10)

role in influencing the stability of the workforce by determining wages and benefits and provider reimbursement."[8]

Our submitted comments should not be construed as opposition to the proposed rule. We are supportive of any and all efforts to address the direct care workforce crisis before we lose complete access to HCBS. Rather, we urge recognition that this proposed rule will not support the stability of HCBS without significant investment in the entire direct care workforce and necessary protections and oversight to ensure there are no further funding shortfalls.

Thank you for this opportunity to provide comment. Please reach out to me at ldawson@ancor.org if we can provide further clarification or information regarding the above.

Sincerely,



Lydia Dawson, J.D.
Director of Policy, Regulatory, and Legal Analysis
ANCOR

[8] Part I. Background, D. Individual Practitioner Workforce Stability and Development Concerns