



October 30, 2023

Ms. Chiquita Brooks-LaSure, Administrator
Centers for Medicare & Medicaid Services, Department of Health and Human Services
Attention: CMS-3442-P
P.O. Box 8016
Baltimore, MD 21244-1850

Submitted electronically via: www.regulations.gov

Dear Administrator Brooks-LaSure:

On behalf of National Core Indicators, we are submitting this comment in response to the *Payment Transparency Reporting Provision* in the [Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting](#) (CMS-3442-P).

National Core Indicators® is a collaboration between our organizations; Human Services Research Institute, National Association of State Directors of Developmental Disabilities Services, and ADvancing States. Together with state developmental disabilities (DD), aging and physical disabilities service systems, and people receiving services, NCI is dedicated to collecting data directly from those with lived experience within service delivery systems, their families and their service providers and helping state systems use those data to improve the quality of supports.

The National Core Indicators® Intellectual and Developmental Disabilities (NCI-IDD) [State of the Workforce \(SoTW\)](#) Survey and the [National Core Indicators Aging and Disabilities](#) (NCI-AD) State of the Workforce Survey are currently used by 30 states to assess the stability and quality of the direct support workforce. The NCI-IDD SoTW survey has been in operation since 2015 and has provided state human service systems with critical data on the workforce such as average wage and average starting wages, benefits paid, vacancy rates, turnover and tenure rates. The collection, analysis and reporting of these data have given us the unique opportunity to hear both from provider agencies and state human service agencies about the challenges resulting from workforce shortages.

NCI recognizes the critical role of direct care workers working in nursing or ICF/IID facilities. Additionally, NCI applauds the effort to gain a better understanding of the percentage of Medicaid payments to ICF/IID and nursing facilities that go to worker compensation, as well as setting minimum nurse staffing levels to ensure sufficient staffing to promote safe, quality care. However, when considered in

conjunction with the payment transparency requirements of the Ensuring Access to Medicaid Services proposed rule (Access rule) (CMS-2442-P) and overall nursing workforce shortages, we worry about unintended consequences.

The Ensuring Access to Medicaid Services proposed rule proposes requiring states to demonstrate that 80% of their rates for home and community-based services (HCBS) go to worker compensation. We have heard from providers that current rates for in-home supports offered in IDD systems are not sufficient to allow this pass-through requirement, some providers might not have reporting infrastructure or business acumen needed to ensure this requirement is consistently met and states would need additional resources to monitor for compliance. The *Payment Transparency Reporting Provision* in the Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting does not include explicit requirements regarding payment adequacy. As a result, **HCBS providers may potentially shift from delivering HCBS supports to institutional services to avoid the payment adequacy requirement.**

Another consideration is that if ICF/IID and nursing facilities respond to the proposed minimum staffing requirements by increasing wages to attract additional staff, especially nurse aides, this could divert direct service professionals away from the already understaffed HCBS workforce.

We strongly recommend that CMS ensure that the payment adequacy requirements for workers in both HCBS and institutional settings are aligned, so as not to inadvertently incentivize the provision of institutional service delivery over HCBS or exacerbate current HCBS workforce shortages.

We appreciate the opportunity to provide comment on this proposed rule. If you have any questions regarding this letter, please feel free to contact Dorothy Hiersteiner at dhiersteiner@hsri.org