



ANCOR Federal Policy Update

MOHR Legislative Conference

September 1, 2023

Alexandria, MN

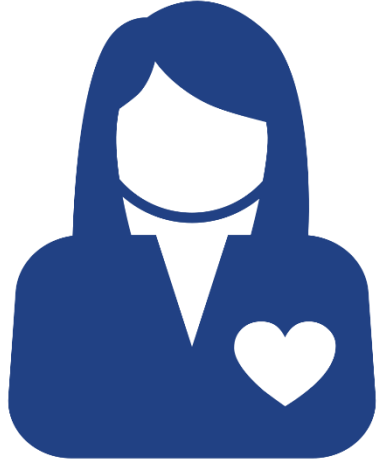
Lynne Megan, Presenter – ANCOR Government Relations Advisory Committee



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ANCOR by the Numbers



2,100+
private providers
of I/DD services



54
state provider
associations



12
100% state
associations

ANCOR's Mission

We exist to advance the ability of our members to **support people** with intellectual and developmental disabilities to **fully participate** in their communities.





Administrative Updates



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HCBS Settings Rule

- **January 2014:** CMS issued the HCBS settings final rule to ensure that beneficiaries of Medicaid-supported HCBS programs have full access to services in settings integrated into the community, rather than in institutional settings.
- **2019:** Originally, states were given a five-year transition period — ending in 2019 — to comply with the new standards. But in 2017, the Trump administration [extended](#) the deadline by three years. Then, with the onset of the COVID-19 pandemic, officials [pushed things back](#) again to March 17, 2023.
- **May 2022:** In response to ANCOR's advocacy, CMS [announced the release](#) of its [slide deck](#) detailing how states can use corrective action plans to request additional time to comply with staff-dependent provisions of the HCBS Settings Rule due to the direct care workforce crisis.
- **December 1, 2022:** Deadline for states to submit a corrective action plan (CAP) to CMS.
- **March 17, 2023:** Deadline for states to receive final approval of their statewide transition plans from CMS.

CMS/ACL introduced a multi-faceted approach

- States must receive final Statewide Transition Plan approval
- States and providers must be in compliance with all settings criteria NOT directly impacted by PHE disruptions, including PHE-related workforce challenges
- Time-limited corrective action plans (CAPs) are available to states to authorize additional time to achieve full compliance with settings criteria that ARE directly impacted by PHE disruptions, when states document the efforts to meet these requirements to the fullest extent possible, and are in compliance with all other settings criteria.

[State] HCBS Settings Rule Timeline

- Minnesota DHS submitted its Settings Plan to CMS in 2017
- CMS granted Minnesota final approval of the STP on February 12, 2019
- CMS visited 6 settings total July 25-27-- day 1, they visited 3 CL settings on the same campus, day 2, they visited 2 CL settings on the same campus and day 3 they visited an Adult Day on the same campus as a nursing facility.
- During the site visit CMS (information from Leah Z. at MN DHS):
 - Reviewed plans—both lead agency and provider developed
 - Interviewed staff and people receiving services
 - Had a tour of the program space and individual apartments
- Outcome of the visit:
 - There were no concerns with the adult day setting that was visited
 - We are waiting to receive written information from CMS about the review – had an exit call and they cited support plans as only area of concern
- If they ask more specifics about what the support plan concerns were, we can provide the following information:
 - • Support plans did not always align with service plans and vice versa
 - • Support plans reviewed did not include signatures from the person receiving services/legal representatives

Regulating Access

In 1989, the equal access provision was put into statute which currently reads that a Medicaid state plan must:

“... assure payments are consistent with efficiency, economy, and quality of care and are sufficient 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 the geographic area;” 42 USC §1396a(30)(A)

Ensuring Access to Medicaid Services

- The proposed access rule seeks to increase transparency and accountability, standardize data and monitoring, and create opportunities for States to promote active beneficiary engagement in their Medicaid programs, with the goal of improving access to care across fee-for-service, managed care, and home and community-based services. [1915(c), 1915(i-k), and indicated 1115 demonstration waivers] ■
- Published date: 5/3/23 ■ Comments due: 60 days (7/3/23)

HCBS Payment Adequacy (80/20)

- State Medicaid agencies will be required to demonstrate that payment rates for HCBS under 1915(c) ensure a **sufficient direct care workforce** to meet the needs of beneficiaries and provide access to services in accordance with the amount, duration, and scope specified in the person-centered service plan.
- For personal care, homemaker, and home health aide services, the state must demonstrate that at least 80% of all payments is spent on compensation for the direct care workforce.

(b) *Included services.* Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

(1) Case management services.

(2) Homemaker services.

(3) Home health aide services.

(4) Personal care services.

(5) Adult day health services.

(6) Habilitation services.

(7) Respite care services.

(8) Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

(9) Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

We considered whether the proposed requirements at § 441.302(k)(3)(i) related to the percent of payments going to the direct care workforce should apply to other services, such as adult day health, habilitation, day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services for individuals with chronic mental illness. However, these services may have facility or other indirect costs for which we do not have adequate information to determine a minimum percent of the payment that should be spent on compensation for the direct care workforce. We request comment on whether the proposed requirements at § 441.302(k)(3)(i) related to the percent of payments going to the direct care workforce should apply to other services listed at § 440.180(b). In particular, in recognition of the importance of services provided to individuals with intellectual or developmental disabilities, we request comment on whether the proposed requirements at § 441.302(k)(3)(i) related to the percent of payments going to the direct care workforce should apply to residential habilitation services, day habilitation services, and home-based habilitation services.

Payment Rates

- Requires states to publish their fee-for-service payment rates with date of last update
- Reduction or restructure of payment rates must first demonstrate no more than 4% reduction in expenditures and no significant access concerns from beneficiaries, providers, or other interested parties
- Establishes an advisory group to consult on rates for personal care, homemaker and home health aid services.

Transparency and Consistency

- Waiting Lists
- HCBS Quality Measure Set
- Critical Incident Systems
- Grievances
- Person-Centered Plans
- Medicaid Advisory Committee and Beneficiary Advisory Group

ANCOR's Response Strategy



Supporting the Intent of the Rule

Acknowledging the direct support workforce crisis

- Workforce crisis as barrier to access
- ANCOR survey

Supporting efforts to improve quality, transparency & consistency, including:

- Requiring payment rate transparency
- Reporting on key metrics related to waiting lists for HCBS
- Establish a critical incident tracking and reporting system

Addressing the HCBS Payment Adequacy Provision

- **Concerns over payment adequacy provision**
 - Impact on providers
 - Uncertainty in application
- **Urge CMS to strengthen access by addressing the root cause of the workforce crisis**
 - Address stagnant and insufficient Medicaid payment rates that do not include adequate funding for competitive wages

ANCOR members got loud about the Access Rule



996

Individual Comments from
ANCOR Supporters
**Representing 44.56% of all
total Comments.** This does **not**
include comments from ANCOR
provider agencies



[Take Action](#)

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CAPACITY-BUILDING TOOLS

Access Rule Resource Center

[Share this page](#)





Judicial Updates

Talevski SCOTUS Decision



- The U.S. Supreme Court upheld the right of Medicaid beneficiaries to bring federal action under Section 1983 in a [7-2 decision](#) this week in the case of *Health and Hospital Corp v. Talevski*.
- Talevski, a resident of a state-run nursing facility, brought suit against the facility for violations of the Federal Nursing Home Reform Act (FNRA). The subsequent judicial review of whether there can be private rights of action to challenge state decisions which implicate federal spending was critical for community services as it threatened access to legal action where states violate Medicaid law. The Supreme Court's ruling this week preserves the rights of people impacted by state decisions pursuant to Medicaid to judicial review and intervention.



ICF Updates



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CMS ends Healthcare Vaccine Mandate for ICF-IID Programs with New Final Rule

- CMS released an unpublished version of a Final Rule last evening, [Medicare and Medicaid Programs; Policy and Regulatory Changes to the Omnibus COVID-19 Health Care Staff Vaccination Requirements; etc.](#) The rule addresses the IFR's released during the pandemic. It was officially published on 06/05/2023 and effective 60 days later.
- As pertains to the ICF-IID program, this final rule:
 - **Withdraws the regulations in the Interim Final Rule "Omnibus COVID-19 Health Care Staff Vaccination" (while the rule does not take effect until 60 days from publishing, CMS will no longer be enforcing effective now)**
 - **Finalizes requirements to provide education about COVID-19 vaccines and to offer COVID-19 vaccines to residents, clients, and staff.**



Legislative Update



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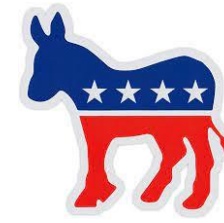
Now that the debt ceiling is in the rear view



Two Keys to Passing Any Bill in the 118th Congress



Legislation Introduced so far (partisan)



▪ **Better Care Better Jobs Act:**

- 10% FMAP bump for states and increased frequency of payment rates review for HCBS providers, with input from stakeholders (after 2 years).
- Permanent extension of the Money Follows the Person program.

▪ **HCBS Access Act:**

- Would make HCBS a mandatory services, removing requirement for states to reapply for waivers; would eliminate waitlists.
- Establishment of grant program for training, retention, recruitment of direct care workers.
- Create a standard occupational classification for DSPs. *****ANCOR's Bill**

▪ **Supporting Our Direct Care Workforce and Family Caregivers Act**

- Legislation that would authorize federal grant programs to support the training, recruitment, retention, and advancement of the direct support workforce and create a TA Center through ACL.

Latonya Reeves Freedom Act



- S. 1193 Introduced on 4/19/23 by Senator Bennett (D-CO) co-sponsors: 17, all Democrats
- H.R. 2708 Introduced on 4/19/23 by Rep. Cohen (D-TN) co-sponsors: 112 Democrats, 4 Republicans
- Establish a comprehensive State planning requirement with enforceable and measurable objectives to transition individuals with disabilities out of institutions and into the most integrated setting, if they choose that transition;
- Prevent State governments and insurers from engaging in discriminatory practices, policies, or rules that would prevent an eligible individual from receiving community-based LTSS;
- Identify and address disparities in the provision of community-based LTSS; and
- Accelerate State compliance with the integration mandate of the ADA.
- The bill would guarantee minimum requirements for coverage of LTSS, regulated by the Attorney General. Public entities and LTSS insurance providers would be required to conduct evaluations of their current practices and policies, identify current gaps in their systems, and implement a transition plan that addresses barriers to community living. The Department of Health and Human Services will be responsible for providing technical assistance, reviewing, and approving these transition plans.

Bipartisan Legislation Introduced: Heads Up Act of 2023

- This bill authorizes the Department of Health and Human Services (HHS) to award grants to support health centers that provide services for individuals with developmental disabilities, including dental care. Grant recipients must provide specialized treatment to individuals with developmental disabilities as necessary.
- The bill also provides statutory authority for HHS to designate individuals with developmental disabilities as health-professional shortage population groups for the purposes of the National Health Service Corps (NHSC). The NHSC provides scholarships and student loan repayment awards to eligible providers who agree to work with designated populations or in areas that face shortages of primary care, dental care, and mental health care providers.
- H.R. 3380 – 5/16/2023
- Sponsored by Rep. Moulton (D-MA); co-sponsors Rep. Fitzpatrick (R-PA), Rep. Dingell (D-MI), Rep. Morelle (D-NY), Rep. Lawler (R-NY)
- Does not require new spending.



Bipartisan Legislation Introduced: SOC Bill

- Recognizing the Role of Direct Support Professionals Act
- Legislation that would create a standard occupational classification (SOC) for DSPs.
- This bill requires the Office of Management and Budget to establish a separate category within the Standard Occupational Classification system for direct support professionals (i.e., individuals who provide services to promote independence in individuals with an intellectual or developmental disability) for data reporting purposes.
- Introduced in the Senate S.1332: Senator Hassan (D-NH) and Senator Collins (R-ME): 4/27/23
- Introduced in the House HR 2941: Rep. Fitzpatrick (R-PA) and Rep. Morelle (D-NY)
- House co-sponsors: Morelle (D-NY), Ross (D-NC), Phillips (D-MN), Golden (D-ME)
- Referred to Senate Homeland Security and Governmental Affairs (HSGAC)
- Does not require new spending.



Visitable Inclusive Tax Credits for Accessible Living (VITAL) Act

- S. 1377: Introduced 4/27/23 by Senator Casey (D-PA)
- Co-sponsors: Duckworth (D-IL), Gillibrand (D-NY), Klobuchar (D-MN), Welch (D-VT)
- This bill increases the low-income housing tax credit to serve the housing needs of older people and people with disabilities. Specifically, the bill increases state allocations of the credit and credit amounts for projects for assisting households with disabled individuals.
- The bill requires each state housing finance agency to establish and operate a Resource Center for the Low-Income Housing Tax Credit Program to support new program applicants and recipients. It also establishes a National Low-Income Housing Tax Credit Advisory Council to provide best practice recommendations to state housing finance agencies and other entities relating to affordable housing trends.
- [Referred to Senate Finance Committee](#)



Take our SOC Action Alert!

S. 1332 | H.R. 2941





The DSP Workforce Crisis



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2022 Workforce Survey Results



The State of America's Direct Support Workforce Crisis 2022



718

The number of respondents to ANCOR's third annual *State of the Direct Support Workforce Crisis* survey

The Direct Support Workforce in Crisis

The results of our 2022 survey reveal that this workforce emergency is now to the point of denying access to services and further threatening quality of services for people with I/DD. Over the course of a four-week period beginning in August 2022, ANCOR fielded a survey across its provider network that garnered 718 responses.



Providers are unable to attract and retain DSPs at a rate that, if left unaddressed, could completely collapse the system of services.

The State of America's Direct Support Workforce Crisis



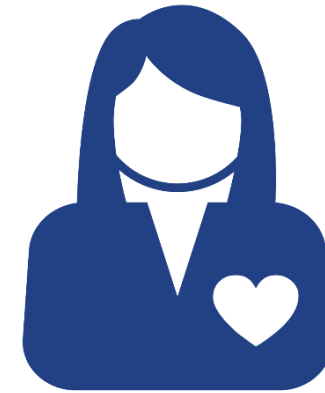
92%

of providers are struggling to achieve quality standards (a 33.3% pre-pandemic increase.)



66%

of providers are concerned vacancy/turnover rates will increase with the end of the PHE.



55%

of respondents who offer case management in addition to LTSS are struggling to find available providers.

The State of America's Direct Support Workforce Crisis



83%

of providers are turning away new referrals (a 25.8% pre-pandemic increase.)



63%

of providers are discontinuing programs and services (an **85.3%** pre-pandemic increase.)



55%

of providers are considering additional service discontinuations.

Watch for our 4th annual survey coming this summer!

The State of America's Direct Support Workforce Crisis 2023



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SAVE THE DATE

2023 ANCOR Policy

Summit & Hill Day

October 10-11, 2023

