

Centers for Medicare & Medicaid Services
Questions and Answers
Long Term Services and Support Open Door Forum
Tuesday, May 7, 2024

1. Question: My question goes back to the 80/20 rule or the payment adequacy provisions of the Access Rule. And specifically, it is, do those requirements apply to the HCBS Waiver Program for assisted living that is categorized by the state as is not categorized by the state as personal care homemaker or home health aide, but it is categorized as other services? Is that covered by the requirement, the 80/20 rule?
 - a. Answer: I think you may be aware that states often refer to the same services with different names, and sometimes they use the same names for different services. And that can happen within a state, and it certainly happens across states. We plan to issue additional sub-regulatory guidance defining the specific services that are subject to this requirement and addressing some of the specific questions that have come up. We have gotten some questions about applicability to assisted living, and that will largely be the answer to the question in terms of applicability to assisted living. So assisted living, that is really a setting where Medicaid services are delivered. I think the specific response to that will be how those services are defined, and we will provide additional sub-regulatory guidance to help states determine whether services delivered in assisted living facilities in their states are subject to the payment adequacy requirements.
2. Question: On the quality measures you mentioned that there's the four different surveys and that for the MFP states, they'll have a choice of which survey they want to use. Does the state need to use the same survey for all of their home community-based services programs? Or can they choose one that is specific to the population that's being served by the waiver? So, such as the NCIAD versus the NCIIDD?
 - a. Answer: So, states have flexibility in terms of the specific surveys that they use. So, for instance, I would not be surprised to see a state that maybe wants to use NCIIDD for the IDD population served in a waiver specific to that. And then to use, say, NCIAD or HCBS CAHPS for waiver programs or HCBS programs that serve older adults or people with physical disabilities. I think we are providing some flexibility so that states, at their discretion, can use the surveys that best meet their needs.
3. Question: I'm a newly licensed home caregiver, and I keep getting the runaround with the long-term service providership for funding. And I'd like to know, is there a direct portal I can use to begin to try and get funding?
 - a. Answer: The answer is going to depend on the state where the services are being delivered. What I would suggest is maybe that we get your contact information and we can follow up separately after this call.
4. Question: You mentioned that CMS will be providing some additional sub-regulatory guidance. Given that that doesn't take place for six years, I know the reporting is in four

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years. Do you have an idea of the timeline on when you will be issuing the additional guidance?

a. Answer: We are in the process of assessing not just for this provision but for all the provisions across the Access Rule where we think sub-regulatory guidance needs to be issued, what specific questions we need to address, as well as what technical assistance materials might be helpful. And so, we are putting, in the process of putting together a list and a release schedule for those materials. We're not ready to share it yet, but we would certainly welcome feedback. In terms of priority areas, we've certainly, we recognize the payment adequacy one that there are some specific questions that people have that we need to address, but we know that there are other areas too. So, we want to make sure that we're prioritizing specific pieces of guidance or technical assistance in a way that makes sense for states and providers and others that will be involved in implementation. And so, we would welcome feedback just in terms of what should be prioritized and also what specific questions people have so that when we issue guidance or technical assistance materials, that we can do our best to try to address those questions as clearly as possible.

i. Question: I think the 80/20 provision is definitely a high priority, understanding who all is involved in that and how CMS is going to determine which services are on that. On the critical incidents requirements and reporting, can you confirm whether a state would be required to utilize one critical incident reporting system for all of their services or if they could potentially have different critical incident reporting systems for say, developmental disabilities versus aging services?

1. Answer: The requirement is to have an electronic critical incident system that includes all of the 1915(c) waivers—(c), (i), (j), (k), and 1115 waivers that have HCBS services. So, we recognize that states aren't starting from scratch and that many states have electronic systems that may be built based on specific waivers. And so, we'd be looking from a state perspective, the reporting requirement is on a state perspective across all of the authorities. So, we'd be looking for a system that has the capabilities to do that. States have some flexibility in terms of how they meet the specific requirements. We are looking for aggregate state-level reporting, but we aren't necessarily requiring a single integrated electronic system. We would certainly encourage states to do that, and we would be happy to provide technical assistance for states around accessing enhanced match for their IT systems and other things that would be helpful for them to implement an integrated system. But states have flexibility—as long as they're meeting the specific

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requirements in the rule, they have flexibility in terms of how they meet those requirements.

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