



Elaine D. Stephens, RN, MPH
Chairman of the Board

NATIONAL ASSOCIATION FOR HOME CARE & HOSPICE
228 Seventh Street, SE, Washington, DC 20003 • 202/547-7424 • 202/547-3540 fax

Val J. Halamandaris, JD
President

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Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention CMS-2249-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Filed Electronically

re: CMS-2249-P RIN0938-AO53: Medicaid Program: Home and Community-Based State Plan Services

To Whom It May Concern:

The National Association for Home Care & Hospice (NAHC) is the largest trade association representing home care and hospice providers. NAHC wishes to thank the Centers for Medicare & Medicaid Services (CMS) for the opportunity to submit comments on the notice of proposed rulemaking: Medicaid Program: Home and Community-Based State Plan Services.

NAHC wishes to thank CMS for this thoughtful and detailed proposal for expansion of home and community services offered to indigent persons in their home. We firmly believe that this benefit will enable more people to access critical supportive services necessary for meeting care management and basic hygiene and nutritional needs, thereby preventing further deterioration of their health status. These services should prove very effective in delaying institutionalization. We are also pleased to see that this benefit will be added to already existing programs including waivers, personal care and mandatory home health services, and that eligibility will be need based.

We offer the following comments and recommendations for your consideration.

Differentiating Between Programs

We are concerned that States and providers of care may have difficulty in determining which of the home and community-based services programs (HCBS) and other Medicare

home care benefits to access for individual Medicaid recipients since they have overlapping eligibility requirements and services.

Recommendation: Establish guidance for States and providers that will help them determine which program or benefit should be accessed based on individual needs and situations.

Rationale: Medicaid recipients should be offered the most appropriate and least costly program or benefit to meet their needs.

Number Served

Also, NAHC is concerned that the methodology CMS has recommended for accounting for the number of individuals served may result in misleading conclusions. According to the notice, CMS proposes to use the number of persons enrolled in the benefit “to indicate individuals for whom these steps have been completed, services have been authorized **or provided**” to be accounted for the annual number served.

Recommendation: Include in the number served only individuals who have received direct services through the benefit. Account separately for individuals who have only been evaluated and determined to meet the criteria for service.

Rationale: Inclusion of persons actually served is the best source of information for evaluating the success of the HCBS benefit. Historically, States have identified large numbers of individuals as meeting eligibility criteria for programs, but many of them have been put on long waiting lists, some never receiving services. Accounting should differentiate between money spent on determining eligibility from that spent on actual provision of services.

Provider Qualifications

NAHC appreciates the fact that people with disabilities and their advocates are strongly supportive of consumer direction of personal care and have worked diligently to make the option more widely available. Clearly, this option provides recipients with more choice and greater independence. NAHC fully supports the rights of individuals to direct their own care. However, we believe that, in its effort to increase access to self-directed care options, CMS has a responsibility to ensure that self-directed assistance programs are driven by consumers’ needs and address quality of care and consumer and caregiver safeguards. CMS must ensure that programs are not driven solely by state financial considerations. We have several recommendations to make to that end which specifically address self-directed care safeguards but should be applied to all providers of service in the HCBS benefit.

First, specific quality standards should be included in self-directed options. Second, the failure to apply existing regulatory requirements that set quality of care standards for providers of home care, such as minimum qualifications and training and reduced oversight of caregivers, puts quality of care for consumers of self-directed care at high risk. Third, accountability standards, which are essential for the protection of individuals

receiving care as well as the Medicaid program, have not been identified and included in the proposed benefit.

Recommendation: The self-directed provisions must address quality assurance through comprehensive minimum standards for training and competency testing. Multi-level provider training standards necessary to meet the consumer's needs, ranging from basic supportive care to highly technical, must be included in every state plan. Such training should be based on federally established uniform standards.

Rationale: Where there is training, there is high-quality care. Whenever untrained and unqualified individuals are put in the position of providing personal care, especially for individuals who have complex medical conditions, there is substantial risk that the care could be substandard and of inconsistent quality thereby putting the care recipient at risk.

An essential quality assurance consideration is basic level provider competencies and training requirements which are necessary for ensuring that providers are capable of safely and effectively delivering care. Consumers directing their own care and their caregivers should be afforded the same important protections that are required when care is provided through other providers.

For the safety of consumers and caregivers, the training, testing, and quality standards to which other providers are held should apply to all models of care. Caregivers should be trained and competency tested before being permitted to provide services. NAHC is concerned that, in the absence of minimum federal quality standards, individuals participating in the program will be in jeopardy and the government could be held liable. Assurance of compliance with quality standards is critical for protection of both the consumer and the service provider.

Recommendation: A thorough assessment of need as well as an individual's ability to self-direct care is essential.

- **The assessment must determine whether individuals are capable of directing their own care**
- **Minimum processes should be established to assure that individuals who are incapable of directing their own care or who require specialized medical treatments are not inappropriately assigned to the self-directed option**

Rationale: Every individual should be carefully assessed to determine whether they are willing AND able to assume the required responsibilities from hiring, training, supervision and employer issues. A goal of home care is to foster independence in the least restrictive environment. Individuals who are capable and choose to should be permitted to self-direct care. However, those who are unable to assume the many responsibilities associated with this model should be required to select other options.

States should be required to ensure that federally-funded programs provide adequate assurances that individuals receiving funding for self-directed care are capable of properly directing providers to deliver needed services safely and effectively. Included are cases where the services provided require highly-trained health care workers, such as when insulin injections, catheter care, nasogastric tube insertion and feeding, ventilator care, suctioning, and other services are needed. Individuals who self-direct, but have not been thoroughly trained in complex medical treatments themselves, will be unable to train a provider. Errors in carrying out complex medical procedures have the potential for disastrous repercussions for the individual and added costs to the health care system. A person receiving highly skilled services must be deemed capable of directing the caregiver in the performance of needed tasks.

Clearly, the self-directed model provides recipients who are capable of directing their care more choice and greater independence. However, protections must be put in place to avoid assigning individuals to this model of care who are incapable of training and supervising their caregiver. It is critical that states' decisions to use this model are not driven by cost considerations instead of consumer needs or quality. Further, consumers directing their own care should be afforded the same important protections (such as those recommended by the Centers for Disease Control and those imposed by OSHA regarding bloodborne pathogens) that are required when care is delivered by other healthcare providers.

Recommendation: Adopt protections against abuse and neglect of individuals directing their own care and fraudulent and abusive practices by all parties involved in a self-directed care model. Require:

- **Provider training in ethical issues and avoidance of practices that are fraudulent and abusive**
- **Federally mandated criminal background checks**
- **Thorough screening of self-directed care providers**
- **Expulsion from the program of providers and consumers found to be engaging in abuse, neglect or fraudulent practices.**

Rationale: Fraud and abuse is certainly the exception, rather than the rule, but is unacceptable in any case. At times, media attention has focused on the unacceptable, but few, cases of abuse of individuals receiving care in the home, fueling consumer anxiety and industry concern about the need for better consumer protections. However, it must be acknowledged that, as in any industry, there are a few unscrupulous individuals who defraud and abuse the system and its consumers. Consumers have also been known to defraud the system.

The prosecution of numerous consumers and individual providers in the IHSS program in California is a prime example of the weaknesses in a self-directed care program. The Fresno district attorney's office has clearly demonstrated the need for federal standards to screen workers and consumers before allowing participation in a consumer directed home care program.

Criminal background checks cannot be relied on as the sole method of keeping consumers safe. No matter how effective, the criminal background check should not substitute for the most basic and prudent personnel practices that any responsible employer would undertake to establish the appropriateness, safety and suitability of an applicant. CMS should require thorough screening. Training should also focus on guidelines for protecting care recipients' rights and include antifraud and abuse training. Individuals who are self-directing their own care should also receive training on what constitutes fraudulent and abusive practices and the penalties for engaging in them, similar to that required of Medicaid providers.

It is totally inappropriate for individuals who engage in abusive, negligent, or fraudulent practices to be allowed to participate in a program with so little oversight and so few protections.

We would like to offer one final recommendation that we believe will help promote consistency of caregivers in the program.

Recommendation: Establish a federally mandated resolution process that states should implement when problems arise between self-directing consumers and providers.

Rationale: Requiring states to employ a federally established resolution process that can be applied when disagreements arise between the consumers and caregivers is critical to smooth program operation. Employment of an effective process will reduce the number of instances where rifts between individuals result in loss of necessary services and the added burden of finding new caregivers.

Thank you for the opportunity to comment on this proposed regulation. If you have any questions about these comments please feel free to contact me at 202 547-7424.

Sincerely

Mary St. Pierre
Vice President for Regulatory Affairs