

State	Detailed Comments on 80-20	Other Notes	Link
Alaska	The Department has concerns with the 80% threshold. The Department recommends CMS consider alternatives that will not negatively impact small providers and providers based in rural locations.	Signed onto 6 state legal analysis comments	https://www.regulations.gov/comment/CMS-2023-0070-1976
Alabama			
Arkansas			
Arizona	The State opposes the creation of a one-size fits all approach with the 80% threshold.		https://www.regulations.gov/comment/CMS-2023-0070-1236
California	DHCS supports the goal of ensuring that payment rates are adequate for a sufficient direct care workforce to meet the needs of beneficiaries, but regretfully opposes the home- and community-based services (HCBS) payment adequacy requirement as proposed. Although we appreciate CMS' underlying intention, we urge CMS not to hastily adopt a new mandate with such far-reaching implications without providing states adequate time and opportunity to fully assess the impact of said mandate on Medicaid costs and beneficiary access to care.		https://www.regulations.gov/comment/CMS-2023-0070-1806
Colorado	HCPF has concerns on the proposed regulations for Payment Adequacy for the Direct Care Workforce (DCW).	Recommends that CMS require states to pay "above minimum wage"	https://www.regulations.gov/comment/CMS-2023-0070-1492
Connecticut			https://www.regulations.gov/comment/CMS-2023-0070-1813
District of Columbia			
Delaware			
Florida	CMS's proposed rules are a flagrant exercise in federal tyranny that circumvents the legislative process and prohibits states from administering their Medicaid programs, which is their lawful right and duty.		https://www.regulations.gov/comment/CMS-2023-0070-1816
Georgia			
Hawaii			
Iowa	While Iowa Medicaid believes this is appropriate, there are concerns with validation and provider willingness and ability to report additional information as they are already tight on workforce. We recommend further discussions with states and HCBS providers related to the best way to operationalize this on an ongoing basis in the midst of stressors already accumulating for this provider network.		https://www.regulations.gov/comment/CMS-2023-0070-2083
Idaho			
Illinois		Misfiled MCO comments as Access	https://www.regulations.gov/comment/CMS-2023-0070-1901
Indiana	Indiana is overall supportive of a pass-through requirement policy for direct care workers (DCWs); however, we have some concerns with how the rule is currently proposed. We believe CMS should offer a more feasible percentage, allow states to ease into the 80 percent over a longer period, or utilize a value-based payment model.		https://www.regulations.gov/comment/CMS-2023-0070-1789
Kansas			

Kentucky	In addition, as it relates to Home and Community Based Services (HCBS) payment adequacy, I would like to note that Kentucky is currently conducting a rate study of our six HCBS waivers. Our intent is to have future reimbursement rates based on the results of our rate study and recently passed legislation regarding HCBS reimbursement rates. Therefore, it may be challenging for Kentucky to implement changes to reimbursement based on our current obligations and timing of waiver renewals.		https://www.regulations.gov/comment/CMS-2023-0070-1844
Louisiana	Supports providing an assurance/attestation for demonstrating compliance with the minimum direct care worker wage requirement.	OAAS has already implemented a rule that 70% of the increased rates must go directly to the worker, which is where we are presently comfortable with respect to the rate and percentage distribution. Signed onto 6 state legal analysis comments	https://www.regulations.gov/comment/CMS-2023-0070-1572
Massachusetts	MassHealth appreciates the focus on payment adequacy and access reporting to address and measure the challenges associated with shortages and high rates of turnover of direct care workers.	Comments focus on reporting, not on the 80-20 proposal	https://www.regulations.gov/comment/CMS-2023-0070-1899
Maryland			
Maine	In general, Maine supports this requirement but offers the following comments on specific aspects of this rule. Define compensation to also include vacation time, workers compensation, and state- and federally-mandated unemployment insurance, as well as expenses related to training, tuition reimbursement, etc. If required to enforce pass through spending, Maine would prefer to do so with a measure directly tied to wage amounts, not to proportional spending.		https://www.regulations.gov/comment/CMS-2023-0070-1544
Michigan	The 80% seems arbitrary and may not be meaningful. Perhaps CMS should consider alternative approaches, such as a scaling threshold based on provider size and rural/urban status and/or an exceptions process for small providers.	Signed onto 6 state legal analysis comments	https://www.regulations.gov/comment/CMS-2023-0070-1378
Minnesota	Minnesota supports efforts to ensure workers are adequately compensated, but we are not prepared to comment on whether any single national threshold is appropriate. We urge CMS to consider requiring states to collect and submit cost data to properly inform and affirm the threshold for any pass-through requirement.		https://www.regulations.gov/comment/CMS-2023-0070-1957
Missouri	DMH opposes CMS' proposal. While Missouri appreciates CMS's intent to strengthen the direct care workforce by mandating a set percentage of rates paid by the state be passed along to the direct care worker (DCW), Missouri DHSS opposes the proposed requirement.	Separate comments from the DD and the Aging agencies. Both also signed onto 6 state legal analysis comments	https://www.regulations.gov/comment/CMS-2023-0070-1546 ; https://www.regulations.gov/comment/CMS-2023-0070-1915
Mississippi			
Montana			
North Carolina	NC DHHS recognizes the intention behind CMS's proposal that 80% of all Medicaid payments for homemaker, home health aide, and personal care services be spent on compensation to direct care workers (DCWs). However, this section of the proposed rule does raise challenges for implementation, enforcement, and workforce retention.		https://www.regulations.gov/comment/CMS-2023-0070-1911

North Dakota	This provision will negatively impact providers and members in North Dakota. CMS should consider alternative approaches, such as a scaling threshold based on provider size and rural/urban status and/or an exceptions process for small providers.		https://www.regulations.gov/comment/CMS-2023-0070-1602
Nebraska			
New Hampshire	The development of the proposed 80% threshold is not supported in the proposed rule, nor is it clear how this percentage was determined. Labor market and wage index factors utilized in Medicare suggest a single standard would likely be problematic.		https://www.regulations.gov/comment/CMS-2023-0070-1739
New Jersey			
New Mexico	This will be very difficult for States to implement as caregivers are mostly employed by external agencies or through an Employer of Record (EOR) under self-directed programs. States will have to heavily enforce these rules on employers, which may legally cause the State to be seen as the common law employer, and that is not the intent of our Agency-Based Community Benefit program. We recommend that CMS provide clear and specific guidance to States on how to enforce any type of pass-through requirement.		https://www.regulations.gov/comment/CMS-2023-0070-1972
Nevada			
New York	OPWDD strongly advocates that the 80 percent proposed payment standard for homemaker, home health aide and personal care standards not be applied to habilitation services.	The DD agency submitted comments and only focused on their own (Habilitation) services. Did not oppose the proposal as written, but the explanation given for why it should not be extended to habilitation also applies to the current proposal.	https://www.regulations.gov/comment/CMS-2023-0070-1740
Ohio			
Oklahoma			
Oregon	Rather than setting a national standard through this rule, Oregon recommends beginning with transparency and reporting requirements and developing a national standard and exceptions process in collaboration with		https://www.regulations.gov/comment/CMS-2023-0070-1810
Pennsylvania	PA DHS supports the policy that at least 80% of payments be spent on compensation for DCWs of homemaker services, home health aide services, and personal care services. PA DHS is concerned about how this will be operationalized and monitored. PA DHS would like to raise the concern with potential unintended provider network adequacy impacts due to increased provider requirements. Recommends allowing other costs, including things for "innovation" that are proven to be for direct care.		https://www.regulations.gov/comment/CMS-2023-0070-1463
Rhode Island	We request additional clarity on the decision to set the benchmark at 80% and whether this threshold is expected to lead to increased workforce compensation or to simply set a floor. We are concerned that a uniform standard on payment adequacy without an exception process could disproportionately impact BIPOC providers and small/new providers relative to larger, established providers. We ask CMS to consider flexibilities to account for such unintended consequences.		https://www.regulations.gov/comment/CMS-2023-0070-1385
South Carolina			

South Dakota	South Dakota needs flexibility to design a rate model that makes service delivery in those areas sustainable for providers. If those components are restricted in the implementation of this regulation, South Dakota believes it will directly cause the closure of providers and reduction of services to individuals in these areas.		https://www.regulations.gov/comment/CMS-2023-0070-1510
Tennessee	[T]he most immediate and obvious result of the rule, if finalized, will be to limit the agencies available to provide HCBS. CMS should carefully consider the comments offered by actual HCBS provider agencies to understand what the true impacts of its proposal are likely to be. CMS should not finalize this provision of the proposed rule.	Signed onto 6 state legal analysis comments	https://www.regulations.gov/comment/CMS-2023-0070-1820
Texas	HHSC has further concerns with the proposed requirement that at least 80 percent of payments for certain services be spent on compensation for direct care workers. CMS does not have statutory authority to prescribe the utilization of funding by employing providers once funds are earned for the provision of services.	HHSC requests that CMS modify this requirement to apply the requirement only to publicly owned or publicly-operated providers whose employment records and compensation agreements are already a matter of public record. HHSC further requests that CMS modify the expense ratio to allow for the inclusion of non-compensation benefits that are related to direct care delivery.	https://www.regulations.gov/comment/CMS-2023-0070-1341 ; https://www.regulations.gov/comment/CMS-2023-0070-1367
Utah			
Virginia			
Vermont	Therefore, although Vermont Medicaid recognizes the importance of improving pay for direct care workers and addressing the direct care workforce shortage, we are concerned about implementing an 80% threshold. Vermont Medicaid, therefore, supports the request from NAMD for CMS to consider alternative approaches to improving the direct care workforce, such as scaling the threshold based on provider size or rural and urban status, and an exceptions process for small providers	Signed onto 6 state legal analysis comments	https://www.regulations.gov/comment/CMS-2023-0070-1177
Washington	The proposal at § 441.302(k)(3)(i) to require at least 80 percent of all Medicaid payments [...] be spent on compensation to direct care workers [...] is problematic for a number of reasons:	More limited pass-through requirements have existed since 2006. "Although these investments in the direct care workforce are critical, a requirement to pass these increases solely to direct care workers has not shown significant impacts on recruitment and retention data."	https://www.regulations.gov/comment/CMS-2023-0070-1858
Wisconsin			https://www.regulations.gov/comment/CMS-2023-0070-1437
West Virginia			

Wyoming	Wyoming suggests that singling out home health services, personal care services, and homemaker services for an eighty percent (80%) pass-through, as well as for additional wage and other reporting requirements, may have unintended consequences for these services and for those receiving HCBS services. The 80% pass-through is a reasonable standard. Wyoming's most recent HCBS rate analysis resulted in 81 % of the rate being committed to direct or nondirect compensation of the direct care workforce. In enforcement of this proposed requirement, Wyoming urges CMS to focus on rate setting methodology rather than administratively cumbersome post-payment audits and reviews.		https://www.regulations.gov/comment/CMS-2023-0070-1175
NASDDDS	Finalizing this provision without adequate substantiation that the approach, and the specific percentage, will have the desired impact poses significant risk to the HCBS system. CMS should consider approaches that do not deter the use of assistive technology, remote supports, or other technology solutions to meet the needs of individuals in lieu of human assistance.	Also submitted joint comments with Advancing States and NAMD	https://www.regulations.gov/comment/CMS-2023-0070-1234
NAMD	CMS should consider alternative approaches, such as a scaling threshold based on provider size, rural/urban status, risk of closure, and/or an exceptions process for small providers. Medicaid agencies have also identified significant challenges associated with implementing the pass-through requirement.	Also submitted joint comments with Advancing States and NASDDDS	https://www.regulations.gov/comment/CMS-2023-0070-1855
Advancing States	Advancing States believes establishing a percentage threshold for DCW compensation without further analysis will likely not achieve the intended outcomes. We recommend that CMS consider alternative approaches.	Also submitted joint comments with NASDDDS and NAMD	https://www.regulations.gov/comment/CMS-2023-0070-1752