ARGENTUM
EXPANDING SENIOR LIVING

July 3, 2023

VIA ELECTRONIC SUBMISSION

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–2442–P
P.O. Box 8013
Baltimore, MD 21244-1850

RE: Medicaid Program; Ensuring Access to Medicaid Services (CMS-2442-P)

Dear Administrator Brooks-LaSure:

On behalf of our members, Argentum appreciates the opportunity to submit comments on the Centers for Medicare & Medicaid Services (CMS) Proposed Rule entitled "Ensuring Access to Medicaid Services."[1] Argentum is a leading national association exclusively dedicated to supporting companies operating professionally managed, resident-centered senior living communities and the older adults and families they serve. Along with its state partners, Argentum's membership represents approximately 75 percent of the professionally managed communities in the senior living industry. Nearly 1 million older adults live in an estimated 28,000 assisted living facilities across the United States. Between 18%-20% of all residents in assisted living facilities receive Medicaid services under state Home and Community Based Services (HCBS) programs and waivers.

Argentum supports the goals of CMS's Proposed Rule of improving access to care for Medicaid beneficiaries and addressing health equity issues in the Medicaid program. As such, we generally support the intent of the Proposed Rule, as well as many of the issues being addressed by CMS. Furthermore, Argentum agrees that more needs to be done to address shortages in the direct care workforce, and that one component to this must be increasing wages for these workers. These individuals are central to the senior living workforce and are at the heart of many of the services our members provide. However, Argentum is concerned that CMS's proposal to require that 80 percent of state payment for certain HCBS be allocated to compensation for direct care workers is not the right approach to address these workforce shortages or increase access to services for Medicaid beneficiaries.

As explained in more detail below, CMS's proposal is ambiguous, making it unclear whether and to what extent this policy would apply to assisted living or similar residential facilities providing HCBS under state Medicaid programs. Furthermore, to the extent the policy would apply to such communities, we are concerned that, without also addressing inadequate reimbursement rates, the proposal to only allow providers 20 percent of Medicaid payments to address all other

[1] 88 Fed. Reg. 27960 (May 3, 2023).

expenses will make it very difficult, if not impossible, for these communities to continue current Medicaid operations, and will require communities to either reduce HCBS services they are currently providing or cease participation in the Medicaid program altogether, which ultimately would have a negative impact on direct care workforce participation and Medicaid beneficiary access to care. Ultimately, this could also lead to the unnecessary utilization of Medicaid skilled nursing care in more restrictive settings and at substantially more cost to state and federal Medicaid budgets.

Given the above, we ask that CMS suspend consideration of this proposal, and instead work with stakeholders to identify other approaches to remedying this issue, particularly by addressing the inadequacy of state Medicaid reimbursement rates for assisted living and similar residential communities participating in HCBS programs.

HCBS Payment Adequacy

Argentum is concerned with the lack of clarity in the Proposed Rule regarding the extent to which the proposed 80 percent requirement would apply to assisted living facilities participating in state HCBS programs. In the Proposed Rule, CMS states that it is proposing to require a minimum percentage requirement for homemaker, home health aide, and personal care services because these services "would most commonly be conducted in individuals' homes and generally community settings" but then separately states that it is soliciting comment on "facility-based residential services and other facility-based round-the-clock services…." This separate reference to facility-based services creates ambiguity regarding whether facility-based communities, like assisted living and similar residential facilities that participate in Medicaid HCBS programs, would be subject to CMS's proposal to begin with.

We also note that CMS states its proposal will apply to homemaker, home health aide, and personal care services, without providing definitions for these terms. This is problematic because state Medicaid programs do not use these terms consistently. States use a variety of different terms to describe these services, which leads to significant variation across the country in how these services are defined and which services fall under relevant payment categories. The proposal's lack of clarity and the variation across states makes it difficult for stakeholders to evaluate the impact of this proposal. Furthermore, state Medicaid programs do not all pay assisted living and similar residential communities for these services in the same way. Some states make separate payments for each service, while others provide senior living communities a single blended payment for all HCBS they provide. CMS does not address this variation in the Proposed Rule, or whether this variation would impact the scope of senior living communities subject to this requirement.

Most importantly, Argentum is concerned that, although well-intentioned, CMS's proposal will have a negative impact on access to HCBS for Medicaid beneficiaries. Argentum recognizes the need to address shortages in the direct care workforce, and that addressing wages is one component of this framework. However, we are concerned that requiring states to ensure that HCBS providers can only allocate 20 percent of existing HCBS payment for all remaining expenses that do not fall under CMS's narrow definition of direct care worker compensation, without also increasing woefully inadequate payment rates for these communities participating in Medicaid HCBS programs, will make it difficult, if not untenable, for them to continue participating in the Medicaid program at all. There are many types of costs that are essential to

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EXPANDING SENIOR LIVING

the proper functioning of HCBS programs that would need to fit within this 20 percent of payment. These costs include training, quality assurance, supervision, compliance with state mandated staffing ratio requirements, insurance, and technology, just to name a few. For many communities, just 20 percent of *existing* HCBS payment will not be enough to cover all of these costs. Furthermore, many states have unique regulatory and other requirements that contribute to significant variation across states in costs associated with providing HCBS and complying with relevant state requirements. This argues against implementing *any* one-size-fits-all minimum percentage approach nationwide.

Given the above, we ask that CMS not finalize this proposal, and instead work with stakeholders to identify solutions to addressing direct care workforce shortages that also increase access to care, particularly by remedying inadequate reimbursement rates for senior living communities providing Medicaid funded services. Increasing Medicaid HCBS reimbursement rates is fundamental to maintaining and increasing access to HCBS provided in assisted living and similar residential communities, allowing vulnerable Medicaid beneficiaries to receive these services in a setting of their choice, and recruiting and retaining essential direct care workers to provide these important services. Argentum hopes to work with CMS and other stakeholders to ensure that Medicaid HCBS payment rates are adequate to fulfill these goals and ensure access to care for vulnerable Medicaid beneficiaries.

HCBS Quality Measure Set

In the Proposed Rule, CMS also proposes to require the use of the Home and Community-Based Services Quality Measure Set in HCBS programs to "promote public transparency related to the administration of Medicaid-covered HCBS." States would be required to report every other year on measures identified in the HCBS Quality Measure Set as mandatory measures, and would be allowed to report on other non-mandatory measures. Argentum understands the need for a uniform quality measure set for HCBS services. However, we ask that CMS work with states to ensure that this new requirement does not excessively burden HCBS providers, who are already experiencing financial difficulties due to low reimbursement rates and workforce shortage issues. As explained above, these providers face significant administrative expenses operating in Medicaid programs with inadequate payment rates. We are concerned that additional reporting burdens will only serve to exacerbate the issue.

Thank you for your consideration of these comments. Please contact me with any questions or requests for additional information.

Sincerely,

James Balda
President & CEO
Argentum