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July 7, 2021

VIA ELECTRONIC TRANSMISSION

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Office of Disaster Assistance
409 3rd Street, S.W. Suite 6050
Washington, DC 20416

Dear Ms. Brooks-LaSure:

As Ranking Member of the Senate Special Committee on Aging, I write to you regarding the state of oversight over Medicaid Home & Community Based Services (HCBS), which are administered by the Centers for Medicare & Medicaid Services (CMS).

Lawmakers have a duty to set, and regulators have a duty to administer, responsible policy that ensures all Americans are afforded the right to age where they prefer with dignity, respect, and quality care. Over the past several decades, Congress has been successful in its endeavor to rebalance Long-Term Services and Supports (LTSS) spending towards HCBS, from making up 1% of Medicaid LTSS in 1981 to 57% in 2016.[1] Research shows that most older Americans prefer to stay at home as they age, and I support this preference.[2]

After decades of funding rebalancing, there are still no generally accepted quality measures for HCBS. It remains impossible to compare states' Medicaid HCBS along quality measures in a scorecard, such as CMS compiles for other Medicaid elements.[3] Last year, the U.S. Department of Health and Human Services' (HHS) Office of the Inspector General (OIG) noted its programmatic oversight work "consistently demonstrates that patients and programs may be vulnerable to fraud and abuse in home and community-based settings. Moreover, home-based services may not meet quality of care requirements."[4]

In the absence of national quality standards, some states have developed their own quality measures. ADvancing States, a 501(c)(3) non-profit organization that represents 56 state and territorial agencies on aging and disabilities and long-term services and supports directors, launched National Core Indicators – Aging and Disabilities (NCI-AD™) in 2015. In the last survey year, only 19 states participated.[5]

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[1] Eiken, S., Sredl, K., Burwell, B., & Amos, A. (2018). *Medicaid Expenditures for Long-Term Services and Supports in FY 2018.* Armonk, NY: IBM Watson Health. Retrieved from http://www.balancingincentiveprogram.org/sites/default/files/LTSSExpenditures2016.pdf.

[2] Binette, Joanne (2018). *2018 Home and Community Preferences Survey: A National Survey of Adults Age 18+ Chartbook*, p. 14. AARP Research. https://www.aarp.org/content/dam/aarp/research/surveys_statistics/liv-com/2018/home-community-preferences-survey.doi.10.26419-2Fres.00231.001.pdf

[3] Centers for Medicare & Medicaid Services. (2020, October). *Medicaid & CHIP Scorecard*. Retrieved from Medicaid.gov: https://www.medicaid.gov/state-overviews/scorecard/index.html.

[4] Office of the Inspector General. (2020). *2020 Top Management and Performance Challenges Facing HHS.* Washington, DC: U.S. Department of Health and Human Services. Retrieved from https://oig.hhs.gov/reports-and-publications/top-challenges/2020/index.asp?utm_source=web&utm_medium=web&utm_campaign=2020-topchallenges.

[5] ADvancing States. (2021). *National Core Indicators - Aging and Disabilities*. Retrieved May 27, 2021, from ADvancing States: http://www.advancingstates.org/initiatives/national-core-indicators-aging-and-disabilities.

Beyond home health, non-medical Medicaid HCBS, known as Personal Care Services (PCS), are especially vulnerable to fraud, as noted by the HHS OIG's Strategic Plan for 2020-2025, which prioritized Medicaid PCS as a key oversight area.[6] Between 2014 and 2020, the HHS OIG opened more than 200 investigations involving fraud and patient harm and neglect in PCS.[7] The HHS OIG published its last comprehensive report on PCS in 2012, when it summarized the results of audits in seven states. Four of these states had error rates ranging from 16% (NC) to 40% (NJ).[8]

In September 2020, CMS issued a request for information on a set of recommended quality measures.[9] That letter cited a 2016 statement by the National Quality Forum in support of CMS's Meaningful Measures initiative, and affirmed that "HCBS lack any standardized set of quality measures…[and] consensus as to what HCBS quality entails." On March 31, 2021, CMS recognized the success of the Meaningful Measures initiative by announcing intent to introduce a Meaningful Measures 2.0 initiative, which "will further shape the entire ecosystem of quality measures that drive value-based care."[10]

Effective solutions to improve quality of care and prevent fraud in Medicaid HCBS are imperative to ensure that older Americans can age at home. This remains a priority for the Aging Committee. I therefore request responses to the following by August 16, 2021:

1. When does CMS expect to launch its Meaningful Measures 2.0 initiative?
2. Will the Meaningful Measures 2.0 initiative include quality measures pertaining specifically to Medicaid HCBS? If so, what will those measures be?
3. What proposals and recommendations has CMS developed to detect and prevent fraud in Medicaid HCBS?
4. When does CMS intend to propose rulemaking or agency guidance that establishes standard quality measures for Medicaid HCBS, as described in its September 2020 request for information?
5. What steps is CMS taking to ensure quality measures will properly include the perspectives of patients and their family caregivers?

Your work to respond is appreciated. All questions or correspondence should please be directed to Nichole Wilson (nichole_wilson@aging.senate.gov). Thank you for your anticipated cooperation.

Sincerely,



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Tim Scott
Ranking Member
Senate Special Committee on Aging

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[6] HHS Office of the Inspector General. (2020). *HHS-OIG Strategic Plan 2020-2025.* Office of the Inspector General. U.S. Department of Health & Human Services. Retrieved from https://oig.hhs.gov/documents/root/7/OIG-Strategic-Plan-2020-2025.pdf.
[7] *Id.*
[8] Office of the Inspector General. (2012). *Personal Care Services: Trends, Vulnerabilities, and Recommendations for Improvement.* Office of the Inspector General. U.S. Department of Health and Human Services. Retrieved from https://oig.hhs.gov/reports-and-publications/portfolio/portfolio-12-12-01.pdf.
[9] Centers for Medicare & Medicaid Services. (2020, September). *Request for Information: Recommended Measure Set for Medicaid-Funded HCBS.* Retrieved from Medicaid.gov: https://www.medicaid.gov/medicaid/quality-of-care/downloads/rfi-hcbs-recommended-measure-set.pdf.
[10] Centers for Medicare & Medicaid Services (March 31, 2021) *Meaningful Measures 2.0: Moving from Measure Reduction to Modernization*. Retrieved June 3, 3021. https://www.cms.gov/meaningful-measures-20-moving-measure-reduction-modernization.