Federal Policy Update

AIRS 2017 I&R Conference
May 22, 2017
ACA Repeal and Health Care Reform
American Health Care Act Review

• Repeals large number of ACA taxes, regulations, and subsidies:
  – Notable: expands age-rating bands to 5:1, or state-defined amount, as opposed to current 3:1 limitation.
• Creates age-based annual tax credit of $2,000-$4,000/individual, capped at $14,000/family (phasing out based on income);
• Significant restriction of ACA Medicaid expansion financing;
• Establishes a “per capita cap” on Medicaid expenditures:
  – Option for block-granting services to children and/or adults without disabilities;
  – Would be most significant change to Medicaid since enactment;
• Places restrictions on LTSS, including:
  – Repeals FMAP increase for 1915(k), limits state option to increase home exclusion for asset tests.
Current Status and Next Steps

• The AHCA narrowly passed the House (217-213) on May 4th, sending it to the Senate;
• In the Senate, there are strict restrictions on what can be included in a budget reconciliation bill:
  – Reconciliation is necessary since it would otherwise require 60 votes;
  – Must be finalized by September 30, or else start over.
• Republicans have split into several working groups to develop proposals:
  – It will not go through the normal committee (ie: Senate Finance) due to the reconciliation process;
  – Can only lose 2 votes, but big divisions remain.
CMS HCBS Regulations
CMS HCBS Regulations: Background

Background: In January 2014, CMS released regulations that create new requirements for the provision of Medicaid HCBS services

- The most significant provision is the requirement that all settings of HCBS services be “integrated into the community”
- Additionally, the rule requires person centered service plans for individuals receiving Medicaid HCBS
- Rule sets expectations that states mitigate conflict of interest between person centered plan development and service delivery

The regulations required states to submit “transition plans” that discuss how they will come into compliance with the rule
Medicaid HCBS Transition Plans

• CMS continues to work with states regarding their HCBS Transition plans;
• Currently, there is one statewide plan with final approval (TN) and 27 with initial approval;
• CMS is focusing on “systemic” and “site-specific” review of settings:
  – Systemic: review of state laws, regulations, licensure requirements, etc., for HCBS settings;
  – Site-specific: process for examining whether the qualities of individual settings comport with the rules.
Current Status and Issues

- Timelines – CMS announced a delay in implementation (until March 2022 instead of 2019) given the lengthy process for transition plan approval;
- Heightened Scrutiny:
  - What process will states use to identify settings subject to heightened scrutiny, determine whether they are compliant with the rules, and submit evidence of the determination to CMS?
- Day services – what is compliant for individuals not seeking employment?
- Assisted living, memory care, and other congregate services for older adults – what is allowable?
DOL Regulations

- White Collar Exemption and Home Care Rule
White Collar Exemption

- In 2015 DOL released a proposed rule that would increase the threshold for overtime exemptions to executive, administrative, and professional workers;
- Currently, the threshold is $455/week ($23,660/year);
- The final rule sets at 40th percentile of the lowest wage census block ($47,476/year) and updates every 3 years;
- An estimated 4.2 million individuals will be impacted by the changes;
- Many HCBS provider agencies may be affected by this rule;
- Rule was blocked by a Federal Judge:
  - Federal government was supposed to respond to injunction; 2 extensions have been issued for the response time (currently the deadline is 6/30/17);
  - Trump administration has expressed opposition to the rule.
Home Care Rule

• DOL released regulations that changed the definition of “companionship” and limited the ability of third-party employers to claim exemption from FLSA;
• Regulations were scheduled to become effective January 1, 2015; however, a Federal Judge placed the major portions of the rule under injunction;
• DOL won appeal of the decision and Supreme Court declined to hear the case;
• Regulations became effective in October 2015 and DOL “discretionary enforcement” ended Dec 31st;
• Administration likely opposed; however, any changes would require a new rulemaking process and could be challenging.
Federal Appropriations
FY2017 Appropriations Bill

- Modest increases to Older Americans Act nutrition services ($3 million total, split $2 million to congregate and $1 million to home-delivered meals);
- $2.5 million increase to OAA HCBS Supportive Services;
- $2 million increase to Elder Justice and Adult Protective Services activities at ACL;
- $34 million cut to the Senior Community Service Employment Program (SCSEP/OAA Title VII);
- $5 million cut to the State Health Insurance Assistance Program (SHIP);
- Cuts to limb loss and paralysis TA centers; and
- Modest increases to Native American grants.
FY2017 Appropriations Bill

• Level funding for the Independent Living Program ($101 million) split between Part B funding ($23 million) and Part C funding ($78 million);
• Level funding ($104 million) for the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR);
• Level funding for Protection and Advocacy (P&A) Systems ($38.7 million)
• $2 million allocated toward grants for Alternative Financing Programs
• $4.4 million decrease to Section 811 Supportive Housing for Persons with Disabilities
• $90 million in increased funding for the Individuals with Disabilities Education Act (for a total of $12 billion)
FY2018 Appropriations

- Formal budget process partially stalled by ACA repeal efforts, which are tied to the federal budget;
  - Appropriations work continues;
- Next step: President Trump releases full budget (expected by the end of the month);
- Expectation of significant proposed reductions to domestic discretionary programs based on “Skinny Budget” recommendations:
  - Elimination of SCSEP, LIHEAP, CDBG;
  - $15.1 billion decrease in funding for HHS:
    - No details on ACL funding were included.
For more information, please visit: www.nasuad.org

Or call us at: 202-898-2578
Policy Resources from the National Council on Independent Living

Website: www.ncil.org
Policy Priorities Booklet (will be updated for summer)

Advocacy Monitor online
• www.advocacymonitor.com

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