

## Budget Reconciliation Package Analysis and Update

**To: State Aging and Disability Directors**

**From: Damon Terzaghi, Rosa Plasencia, and Adam Mosey**

**Re: Build Back Better Budget Reconciliation Package**

**Date: October 28, 2021**

### Background

Earlier this year, President Biden released his “Build Back Better” proposal, which included a significant amount of funding for health and human services. The President’s proposal included \$400 billion for home and community-based services but did not provide any detail regarding the method for allocating this funding or the policies within. The Build Back Better proposal formed the starting point for negotiations within the Democratic party regarding reconciliation legislation that could be passed with a simple majority in each chamber of Congress.

Since that time, ongoing negotiations between the various factions of the Democratic party have led to a tightening of the provisions and a reduction of the overall cost of the bill. Earlier this summer, the House passed their version of the Reconciliation bill, which included \$190 billion for Medicaid HCBS; however, opposition in the Senate led to further trimming of various policies and provisions from the House proposal. This morning, the White House released fact sheets and high-level summaries of a deal that was struck between the House, the Senate, and the Administration. Shortly after, the House Rules committee posted bill text that would enact the agreement; however, at this it is unclear whether the agreement has sufficient support to pass Congress.

### Takeaways and Analysis

The BBB proposal released today, if passed into law, would have significant impacts for Medicaid LTSS as well as aging & disability programs. In particular, we would highlight that the bill:

- Allocates an estimated \$150 billion for Medicaid HCBS, which includes:
  - A permanent 6% FMAP increase to states that meet all the applicable requirements;
  - A temporary additional 2% FMAP increase for states that implement a self-direction program that includes certain defined criteria;
  - A permanent reauthorization of the Money Follows the Person program, funded at \$450 million a year; and

- A permanent extension of the Affordable Care Act’s Medicaid spousal impoverishment protections.
- Allocates approximately \$1.2 billion for OAA;
- Provides a retroactive waiver OAA of the state/local match contained in ARPA;
- Adds a new hearing – but not dental nor vision – benefit to the Medicare program;
- Provides new funding and reauthorization for the Elder Justice Act, including additional APS funding;
- Provides \$1 billion to ACL for HCBS workforce development, training and retention grants;
- \$900 million for housing supports to older adults and people with disabilities.

## Medicaid Provisions

### Sec. 30711 – HCBS Improvement Planning Grants

- Provides \$130 million for HCBS improvement planning grants.
- Appropriates an additional \$5 million for technical assistance and guidance related to the HCBS planning grants.
- No later than 12 months after passage, HHS must award grants to carry out planning activities for purposes of developing and submitting to the Secretary an HCBS improvement plan:
  - States may use planning grant funds to support activities related to the implementation of the HCBS improvement plan, collect and report required information, identify areas for improvement to the HCBS service delivery system, carry out activities related to evaluating payment rates for HCBS, identifying improvements to update the rate setting process, and make related infrastructure investments (such as case management or other information technology systems).
  - None can be used as non-federal share.
- Defines the required contents of the HCBS Improvement plan, which must include:
  - Assessment/description of existing HCBS in the state, including:
    - Description of eligibility, including the different groups, standards, methodologies, income and assets;
    - benefits, including covered services, utilization management, and settings in which they are provided;
    - barriers to accessing services (as reported by participants, families, direct care workers/agencies, and similar orgs);
    - Availability to eligible individuals & unmet need;
    - Summary of utilization, including number of people receiving services;
    - Service delivery structures;

- Workforce info, including estimates of full/part time workers, average & range of wages, benefits, turnover rates, and vacancy rates;
  - Payment rates for HCBS, including how they are factored into managed long-term services and supports (MLTSS) cap rates;
  - The last time rates were updated;
  - An estimate of the portion of payment that is attributable to DCW compensation;
  - Assessment of relationship between payment rates, workforce shortages, and beneficiary wait time;
  - Description of quality measurement/monitoring strategies;
  - Number of individuals in an institution for more than 30 days in a year;
  - HCBS as overall share of LTSS spending;
  - Demographic info of individuals related to access, utilization, and institutional residents.
- Goals for the HCBS improvement plan:
  - Description of how the state will conduct the required HCBS improvement plan activities;
  - Reduce barriers and disparities in HCBS access & utilization;
  - Monitor access, barriers & disparities;
  - Monitor and report on Medicaid HCBS expenditures as a proportion of LTSS spend;
  - Monitor and report on worker wages, benefits, turnover, and vacancy rates;
  - Assess and monitor sufficiency of HCBS payment rates;
  - Coordinate implementation of the HCBS improvement plan across Medicaid, aging, and disability agencies/
- The plan must go through public comment period, including with:
  - Medicaid HCBS recipients;
  - Family caregivers;
  - Providers;
  - Health plans;
  - Workers;
  - Chosen representatives of direct care workers; and
  - Aging, disability, and workforce advocates.
- A State must submit a HCBS improvement plan no later than 2 years after getting a planning grant.

- HHS can recoup or withhold improvement planning grant funding if a state does not meet the requirements.
- HCBS defined as the following services as authorized by the Social Security Act:
  - 1905(a)(7) home health services;
  - 1905(a)(8) private duty nursing;
  - 1905(a)(19) and 1915(g) case management;
  - 1905(a)(13) rehab services (including behavioral health)
  - 1905(a)(24) personal care services;
  - 1905(a)(26) PACE programs;
  - HCBS authorized under 1915(b), 1915(c), 1915(i), 1915(j), 1915(k), 1115 waivers, or 1937 managed care; and
  - Other HHS-defined services.

#### Sec. 30712 – HCBS Improvement Grants

- Provides 80% Medicaid administrative match for admin expenses until Oct 1, 2031 for expenses related to expanding/enhancing HCBS, including:
  - Enhancing Medicaid data/tech infrastructure (please note: the bill clarifies that this is not meant to reduce any match, so our interpretation is that states which go through the APD process and implement eligible IT investments should be able to secure the standard 90% matching rate);
  - Modifying rate setting;
  - Adopting/improving worker & family caregiver training programs;
  - HCBS ombudsman activities;
  - Activities to identify & assign unique worker IDs for direct care workers; and
  - Implementing, enhancing, and operating worker registries (or similar programs).
- Enacts a permanent 6% FMAP increase (capped at 95%) for HCBS improvement states that meet all requirements:
  - Use the funds to supplement and not supplant state funds spent on HCBS, as of the date the state is awarded a HCBS planning grant (states have 3 years to spend state savings that arise from the increased FMAP);
  - Adhere to the maintenance of effort (MOE), which prohibits a state from:
    - Reducing the amount, duration, or scope of included HCBS compared to the date when the state was awarded a planning grant;
    - Reducing HCBS payment rates (including assumed HCBS rates in MCO capitation calculations);

- Adopting more restrictive standards, methodologies, or procedures for determining HCBS eligibility or the scope of services provided;
    - Increasing cost sharing;
  - Improve access to services by doing all of the following:
    - Reduce barriers and disparities for access to or utilization of HCBS, as described in the improvement plan;
    - Cover state plan personal care under 1905(a)(24);
    - Implements a no wrong door program;
    - Provides expedited HCBS eligibility;
    - Improves HCBS counseling and education programs;
    - Expands behavioral health in HCBS;
    - Improves coordination of HCBS with employment, housing, and transportation;
    - Provides family caregiver supports; and
    - Adopts or expands coverage under a Medicaid buy-in program.
  - Strengthen and expands the direct care workforce by:
    - Adopting processes to ensure that payment rates are sufficient to ensure access to care to the extent described in the HCBS improvement plan;
    - Updating qualification standards and developing training for direct care workers and family caregivers;
    - Update (and increase, as needed) payment rates to support worker recruitment and retention no later than 2 years after the HCBS improvement plan period begins and at least every 3 years after;
    - Ensure that the increases are incorporated into MCO payment rates; and
    - Ensure that direct care worker compensation increases in proportion to the rate increase.
  - Establish the following reporting & oversight:
    - Designating an HCBS ombudsman that:
      - Is independent from the Medicaid agency and any MCOs;
      - Provides direct assistance to HCBS participants and their families; and
      - Identifies and reports systemic issues related to HCBS.
    - Reporting, beginning with the last day of the fifth quarter after receiving a grant and annually thereafter, on the implementation of the required activities, the use of the enhanced funding, and progress related to availability and access.
- Provides an additional 2% match above the 6% for states that implement a self-direction program, including agency with choice, that:
  - Registers workers and assists participants with finding workers;

- Performance activities to recruit, retain, and train providers;
- Ensures safety and quality of care;
- Facilitates coordination between state and local agencies and direct care workers for:
  - Public health matters;
  - Training opportunities;
  - Changes in program rules/requirements;
  - Workplace health & safety; or
  - Related matters.
- Supports participant hiring/employment of workers;
- Provides support to participants who wish to hire a family member/friend as a caregiver (to the extent allowed by the state).
- The state does not qualify for the FMAP increase if:
  - The state becomes out of compliance with the requirements listed above; and/or
  - After 7 years, the state does not demonstrate that:
    - There is increased availability of HCBS, above a marginal amount, compared to prior to the implementation of the program;
    - The state spends at least 50% of LTSS expenditures in the community; and
    - The proportion of spending in the community has not decreased since the plan was approved.
- HHS is provided \$15 million to carry out the HCBS improvement plan, which should be used for:
  - Issuing guidance;
  - Providing technical assistance;
  - Ensuring program integrity and oversight; and
  - Providing reports to congress beginning 5 years after the passage of the bill and every 3 years thereafter.

#### Sec. 30714 – HCBS Quality

- The legislation requires states to report on HCBS as part of the Adult Core Measure set, no less than two years after CMS/HHS issues required data elements. CMS/HHS is allocated \$22 million to establish these required HCBS measures, including development and testing new measures if needed.
- The bill also provides 80% FMAP for expenditures attributable for collecting and reporting the required HCBS quality measures.

#### Sec 30715: Spousal Impoverishment

- The legislation permanently extends the HCBS spousal impoverishment protections originally enacted in the Affordable Care Act and extended several times since their initial scheduled expiration in 2019.

#### Sec 30716: Money Follows the Person

- The legislation permanently reauthorizes the Money Follows the Person program and provides it with \$450 million annually;
- HHS is provided \$5 million every three years for MFP evaluation, reporting, and technical assistance.

### **Older Americans Act and Related Provisions**

#### Sec. 25001 - Assistive Technology Act

- Allocates \$10 million to the Assistive Technology Act programs.

#### Sec. 25004 – Funding for the Aging Network and Infrastructure

- \$75 million for the Research, Demonstration, and Evaluation Center for the Aging Network.
- \$655 million for Title III-B supportive services, including:
  - Services made available for FY2021;
  - Investing in aging service network for the purposes of improvement supporting services and enhancing aging services workforce;
  - Acquisition/alteration/renovation of facilities, including senior centers and mobile units
  - Construction or modernizations of senior centers.
- \$140 million for Title III-C nutrition services, including modernization of infrastructure and technology – such as kitchen equipment and delivery vehicles.
- \$150 million for Title III-E caregiver supports.
- \$50 million for Title VI grants for Native Americans.
- \$50 million for the LTC ombudsman program.
- \$59 million for technical assistance or national resource centers supported by the OAA, including those under Title IV of the OAA.
- \$15 million for TA centers under the OAA that are focused on providing services for older individuals who are underserved due to their sexual orientation or gender identify.
- \$1 million for national training and TA centers under the OAA to:
  - Support expanded reach of aging services network and to keep older adults social engaged and active;

- Additional support for addressing social isolation;
- Promote promising practices and identify innovation;
- Support a repository for innovations designed to tailor social engagement activities to meet needs of older adults.
- \$5 million to support demonstrations and research projects on multigenerational and civic engagement activities.
- Provides a retroactive waiver of the state and local match provisions that were included in the American Rescue Plan Act, unlike prior OAA supplemental appropriations bills.

#### Sec. 22302 – Grants to Support the Direct Care Workforce

- \$1 billion for ACL, to remain available to 2031, for awarding grants to support the direct care workforce. Awards would be given based on an application basis and would be for a period of three years with the option to renew.
- Eligible entities for the grants include one of the following (or a consortium of the following):
  - A State;
  - A labor organization or a joint labor-management organization;
  - A nonprofit organization with experience in aging, disability, supporting the rights and interests of direct support workers, or training or educating direct support workers;
  - An Indian Tribe or Tribal organization;
  - An urban Indian organization;
  - A State board or local board;
  - An area agency on aging; and
  - An institution of higher education or an area career and technical education school, when in partnership with any of the previous entities.
- The funding is to be used:
  - To provide the following supports and services to direct care workers:
    - competitive wages;
    - benefits;
    - transportation;
    - child care; dependent care;
    - workplace;
    - accommodations;
    - workplace health and safety protections; and
  - One or more of the following:
    - Developing and implementing a strategy for the recruitment of direct support workers;
    - Developing and implementing a strategy for the retention of direct support workers (including family caregivers) using evidence-based best practices such as mentoring;



- Developing or implementing an education and training program on the rights of direct support workers under employment law on—
  - wages and hours,
  - safe working conditions,
  - forming, joining, or assisting a labor organization; and
- Training on relevant Federal and State laws (including regulations) on the provision of home and community-based services;
- Providing a progressively increasing, clearly defined schedule of hourly wages for each hour the worker spends on the education and training programs;
- Developing and implementing a strategy for worker retention and career advancement;
- Using evidence-based models and standards for achievement of postsecondary credentials, including:
  - pre-apprenticeship or registered apprenticeship programs;
  - work-based learning; or
  - on-the-job training;
  - on-the-job supervision or mentoring; and
  - training on the in-demand skills and competencies of direct support workers.

#### Sec. 25005 – Technical Assistance Center for Supporting Direct Care and Caregiving

- \$20 million for ACL to establish, directly or through grants, a national technical assistance center to:
  - Provide TA for supporting direct care workforce recruitment, education and training, retention, career advancement, and for supportive family caregivers;
  - Develop and disseminate a set of replicable models or evidence-based/evidence-informed strategies for –
    - Recruitment, education and training, retention, and career advancement of DCWs,
    - Reducing barriers to accessing direct care services, and
    - Increasing access to alternatives to direct care services, including AT.
  - Provide recommendations for education and training curricula for DCWs.
  - Provide recommendations for activities to further support paid and unpaid family caregivers, including expanding respite care.

#### Sec 25006 – Funding to Support Unpaid Caregivers

- \$40 million for ACL to award grants to states/nonprofits/institutions of higher ed/ Tribal organizations for initiatives to address the behavioral health needs of unpaid caregivers of older adults and older relative caregivers.

#### Sec. 25007 – Funding to Support Individuals with IDD

- \$25 million for ACL to award grants/contracts for initiatives to address the behavioral health needs of individuals with IDD.

#### Sec. 22013 – Senior Community Service Employment Program (SCSEP)

- \$35 million for the SCSEP program.

#### Sec. 40004 – Section 811 Supportive Housing for People with Disabilities

- \$450 million for the section 811 housing program.

#### Sec. 40005 – Section 202 Supportive Housing for the Elderly

- \$450 million for the section 202 supportive housing program.

### **Elder Justice Provisions**

#### Sec. 2041 – Nursing Home Worker Training Grants

- \$392 million for State allotments for state wages, loan repayment or tuition assistance, child care, and transportation assistance:
  - No more than 10% may be used for administration.
- \$8 million for Tribes and Tribal organizations to provide a fund for individuals in emergency situations, provide in-kind resource donations (such as interview clothing or conference attendance fees), legal assistance to address employment barriers, paid leave provision, and other supports.

#### Sec. 2042 – Adult Protective Services Functions and Grant Programs

- \$392 million for State and DC allotments, \$8 to Tribes and Tribal organizations. The language changes funding from solely elders to include adults with disabilities.

Sec. 2043 – Long-Term care Ombudsman Program Grants and training

- \$22 million for FY2023, \$30 million for FY2024-25.

Sec. 2047 – Incentives for Developing and Sustaining Structural Competency in Providing Health and Human Services

- \$500 million for FY2023 to fund through FY2028. Grants to States to Support Linkages to Legal Services and Medical Legal Partnerships.
  - Grants to establish and administer evidence-based approaches to create linkages between health and social services and supports for vulnerable elders. Including: medical legal-partnerships, legal hotline development or expansion, state reports and evaluation.
- \$250 million for FY2023 to fund through FY2028. Grants on Training to Support Area Agencies on Aging (AAAs) or Other Community-Based Organizations to Address Social Isolation Among Vulnerable Older Adults and People with Disabilities through:
  - Conducting outreach to individuals at risk for, or already experience, social isolation or loneliness;
  - Developing community-based interventions;
  - Connecting at-risk individuals with community social and clinical supports;
  - Programs to provide training for AAAs or other community-based organizations with respect to addressing and preventing social isolation and loneliness among older adults and people with disabilities;
  - Report to congress after FY2025 that evaluates these program areas.

Sec. 134202 – Appropriation for Assessments

- \$5 million for each FY2023-26, reports on the above programs, coordinating bodies, registries, and activities. Reports will determine what has improved access to, and quality of, resources to aging Americans and their caregivers to prevent, detect, and treat abuse, neglect, and exploitation.
  - The report shall include recommendations to Congress on funding and policy changes.

## Skilled Nursing Facility Provisions

### Sec. 134301 – Funding to Improve the Accuracy and Reliability of Certain SNF Data

- \$50 million for FYs 2023-2025 to improve accuracy of SNF data reporting.

### Sec. 134302 – Ensuring Accurate Information on Cost Reports

- \$250 million for FY 2023, to remain available to 2031, for purposes of conducting annual audit of cost reports from representative sample of SNFs.

### Sec. 134303 – Survey Improvements

- \$325 million for FY 2023, to remain available to 2031, for:
  - Conducting reviews and identifying plans;
  - Providing training, tools, and TA and financial support.
- HHS secretary is directed to review surveys and their compliance with regulations, their timeliness, accuracy, and consistency among other areas.

### Sec. 134304 – Nurse Staffing Requirements

- \$50 million for FY 2023 – 2031 for:
  - A study on appropriateness of resident ratios for nursing staff for SNFs;
  - Promulgation of regulations.

## Conclusion

Although it is unclear whether this proposal currently has sufficient support to pass Congress, we do believe that the Democratic majority will ultimately pass a reconciliation bill that President Biden will sign into law. We believe that the provisions related to the Medicaid HCBS funding is likely to be included in the final deal. However, it is less clear whether the OAA and EJA provisions will make it into the final package. We do note that significant negotiations are ongoing and there is a chance that policy and funding levels could shift further, including some of the aging and disability programs.

As always, we will keep the Advancing States members informed as the negotiations continue and this legislation progresses through the congressional processes. Please feel free to reach out to anyone on the Advancing States team with questions or concerns.