# Fact Sheet: Proposed Medicaid Institutional Payment Transparency Reporting

On September 6, 2023, the Centers for Medicare and Medicaid Services (CMS) issued a notice of proposed rulemaking, *Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting*, which seeks to establish comprehensive nurse staffing requirements for nursing homes and promote public payment transparency.

## Intermediate Care Facilities for Individuals with I/DD (ICF/IID)

While the vast majority of the proposed rule impacts nursing and skilled nursing facilities exclusively, there is an added provision which directly impacts Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs). ICF/IIDs are an optional Medicaid benefit that enables states to provide comprehensive and individualized health care and rehabilitation services to promote health and independence. Although it is an optional Medicaid benefit, all states offer ICF/IID services and there are few resources like it under any payment source.[1]

### *Medicaid Institutional Payment Transparency*

The proposed rule includes a Medicaid Institutional Payment Transparency mandate, which would impact both nursing facilities and ICF/IIDs. The Medicaid Institutional Payment Transparency provision would require states to publicly report the percentage of Medicaid payments expended for direct care workers and support staff compensation. This provision is concerning to ANCOR because the provision does not get to the root causes of the direct support workforce crisis and its definitions and reporting requirements do not appear to recognize the inherent differences between ICF/IIDs and nursing facilities.

It is essential in rulemaking that the differences between ICF/IID and nursing facilities are recognized:

- ICF/IIDs serve individuals with intellectual and developmental disabilities (IDD) who require varying levels of support and care. The program's central purpose is to provide specialized active treatment, facilitating clients to achieve their highest level of independence. There is a strong emphasis on improving residents' quality of life and community engagement.

- ICF/IID facilities vary greatly in design, size, and staffing structures, but a commonality shared by all ICF/IIDs is that they strive to model a home-like environment. In contrast to nursing facilities, many ICF/IIDs operate at a smaller scale, commonly providing residential support services for only four to six people with disabilities. ICF/IID services typically ensure access to off-site day habilitation services and other community engagement activities through contractual arrangements.

- ICF/IID staff undergo specialized training to meet the unique and individualized needs of people with IDD, primarily relying on direct support professionals (DSPs) to deliver direct support services. Given the emphasis on active treatment, multiple tiers of positions are

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[1] Intermediate Care Facilities for Individuals with Intellectual Disability | Medicaid

necessary to support the development and implementation of care plans, including state and federal requirements for Qualified Intellectual Disabilities Professional (QIDP) to coordinate all services.

## Definitions and Reporting Requirements

The proposed definitions for direct care workers, support staff, compensation and the accompanying reporting requirements appear more tailored to nursing home settings and, as such, do not comprehensively represent the diverse roles and responsibilities within ICF programs.

- The definitions for direct care workers and support staff do not acknowledge the spectrum of support delivered in ICF/IIDs. Direct care workers in ICF/IID facilities often assume a broad spectrum of job responsibilities that overlap with traditional support staff roles, encompassing cooking, cleaning, and laundry.

- ICF/IIDs engage contracted labor in various capacities, including direct care staffing, contracted day habilitation, and community support services, housekeeping and maintenance service contracts, and transportation services. Requiring compensation reporting on third-party vendors using contracted and subcontracted labor is not feasible for ICF/IIDs.

- The definition for compensation does not include important expenses necessary to support the direct care workforce, including training and recruitment and retention benefits. Critical and extensive specialized training is necessary for the workforce supporting ICF/IIDs, from support for community integration to decision-making and self-determination. Benefits are further challenging to quantify on a per-worker basis and include employee wellness programs, childcare support, nutrition programs, and even budgeting assistance for staff experiencing financial shortfalls.

Each state operates under its own reimbursement system, with varying ICF program designs encompassing various caps and cost categories, further complicating the ability to compile valid aggregate data. Facility-level reporting presents challenges, especially without contextual information regarding differing costs, including resident acuity, facility size, state staffing requirements, and state reimbursement models.

## Alignment with the proposed Access Rule

The Medicaid Institutional Payment Transparency provision is proposed to address workforce challenges impacting access within nursing facilities and ICF/IID while referencing alignment with the intent to address home and community-based services (HCBS) workforce crisis through the proposed *Ensuring Access to Medicaid Services* (Access Rule). While this proposed rule does not propose a minimum percentage threshold for direct care compensation, the preamble references an intent for further policy development based on the data it receives.

ANCOR remains concerned that the establishment of a minimum direct care compensation percentage would not address the root cause of the direct support workforce crisis: stagnant and insufficient Medicaid payment rates that do not include adequate funding for competitive wages. Instituting new reporting and administrative burdens which will not address sufficient payment risks further burdening providers at a time of reduced capacity.

## Submitting Comments

**There is a 60-day comment period with submissions due by November 6, 2023**.

- Begin your comment by introducing yourself as a dedicated provider of community-based services for individuals with I/DD. Highlight your experience, expertise, and commitment to the field. Incorporate real-life anecdotes, experiences, or challenges you have encountered as a provider.
- Clearly reference the proposed rule, CMS-3442-P, Medicare and Medicaid Programs; *Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting*, and the impact it will have on your organization and the services you provide.
- Acknowledge any positive aspects or good intentions of the proposed rule.
- Advocate for acknowledgment of the unique services provided and challenges faced by ICF/IIDs.

When you're ready to submit:

- Visit: https://www.federalregister.gov/documents/2023/09/06/2023-18781/medicare-and-medicaid-programs-minimum-staffing-standards-for-long-term-care-facilities-and-medicaid
- Click the green button that says "Submit a Formal Comment."
- Complete the required text fields:
    - In the Comment field, enter "See attached."
    - In the Upload File(s) field, upload your completed comments.
    - In the "Tell us about yourself! I am..." field, select An Organization.
        - For Organization Type, select Organization.
        - For Organization Name, add your organization's name.
    - Check the box corresponding with "I read and understand the statement above."
- Once these tasks are completed, the Submit Comment button will turn green and you will have the ability to submit.

**Contact:** Have questions or thoughts for ANCOR? Email Lydia Dawson, Senior Director of Government Affairs, at ldawson@ancor.org.