

Congress of the United States

Washington, DC 20515

May 28, 2024

Administrator Chiquita Brooks-LaSure
Centers for Medicare and Medicaid Services
200 Independence Ave, SW
Washington, DC 20201

Dear Administrator Brooks-LaSure:

We write to you today to express concern about the variable quality of care patients receive when enrolled with Personal Care Service (PCS) Providers or self-directing Personal Care Attendants through Medicaid and to seek your swift action to implement provisions within the *Ensuring Access to Medicaid Services* (Access Rule) final rule to establish more robust quality controls for Personal Care Service paid for through Medicaid.¹ In particular, we encourage the implementation of provisions within the final rule to establish stronger oversight of Home and Community-Based Services and to strengthen person-centered service planning and care management.²

We recognize that CMS has long been aware of concerns about abuse and neglect of beneficiaries by some PCS providers for many years. In response to ongoing concerns about abuse, neglect, and fraud, in 2012, the Office of the Inspector General (OIG) published a portfolio report on PCS.³ This report observed improper payments linked to noncompliance with state requirements and poor documentation of care, inadequate controls to ensure appropriate quality of care and payment, and broader concerns about PCS fraud. Based on its findings, the OIG issued five recommendations, including recommendations that CMS promulgate regulations to reduce significant variation in state PCS attendant qualifications and laws, as well as recommendations to improve CMS' and states' ability to monitor the quality of care and payments by requiring PCS attendants to register with CMS or the state.⁴

In 2016, the OIG again published an Investigative Advisory urging CMS to take further action to prevent fraud, patient harm, and neglect in Medicaid PCS.⁵ This report highlighted fraud risks perpetrated by PCS agencies and Personal Care Attendants in self-directed programs, overbroad geographical service areas, and, most importantly, instances of patient harm. Based on its findings, the OIG recommended CMS take the following steps:⁶

- “Establish minimum Federal qualifications and screening standards for PCS workers, including background checks.

¹ Centers for Medicare and Medicaid Services, & Centers for Medicare and Medicaid Services Medicaid Program; *Ensuring Access to Medicaid Services Proposed Rule*.

² Centers for Medicare & Medicaid Services. (2023, April 27). *Fact sheets ensuring access to Medicaid Services (CMS 2442-P) notice of proposed rulemaking*. CMS.gov. <https://www.cms.gov/newsroom/fact-sheets/ensuring-access-medicaid-services-cms-2442-p-notice-proposed-rulemaking>

³ “Personal Care Services - Office of Inspector General - Hhs.Gov.” *Personal Care Service: Trends, Vulnerabilities, and Recommendations for Improvement*, Office of the Inspector General, Nov. 2012, oig.hhs.gov/reports-and-publications/portfolio/portfolio-12-12-01.pdf.

⁴ Ibid.

⁵ Wachino, Vikki. *Investigative Advisory on Medicaid Fraud and Patient Harm Involving Personal Care Services*, Office of the Inspector General, 3 Oct. 2016, oig.hhs.gov/reports-and-publications/portfolio/ia-mpcs2016.pdf.

⁶ Investigative Advisory on Medicaid Fraud and Patient Harm Involving Personal Care Services. (2016, October 3). Office of Inspector General. <https://oig.hhs.gov/reports-and-publications/portfolio/ia-mpcs2016.pdf>

- Require States to enroll or register all PCS attendants and assign them unique numbers.
- Require that PCS claims identify the dates of service and the PCS attendant who provided the service.
- Consider whether additional controls are needed to ensure that PCS services are allowed and provided under program rules.”

Since those recommendations were made, we recognize that CMS has taken significant steps toward protecting the care Medicaid beneficiaries receive, and we encourage the Center to go further by implementing the Access Rule provisions that prioritize patient care.⁷ In particular, we commend CMS for prioritizing person-centered care management. We are optimistic about the impact of CMS's final rule to require state Medical Care Advisory Committees (MCACs) to proactively and regularly include beneficiaries and consider a perspective borne of their lived experience as they implement high-quality Medicaid services. We are further buoyed by the creation of Beneficiary Advisory Committees. Defining and protecting the role of beneficiaries within MCACs is critical to ensuring that beneficiary perspective care will remain, as intended, at the heart of the implementation of Personal Care Services. Finally, providing additional guidance to states as they implement the MCACs as outlined in the final rule will ensure regulators hear beneficiaries' voices in every state.⁸

We strongly encourage CMS to convene a technical expert panel in line with and to build on the Access Rule and consult with stakeholders, including personal care service recipients, people with disabilities, seniors, disability rights advocates, small and large personal care service providers, and unions or other entities that represent individual Direct Service Providers to establish a plan to implement many of the recommendations of the OIG and explore other program integrity supports and safeguards which may be needed.

CMS's work to combat abuse, neglect, and fraud is critical. Our shared responsibility is to ensure that the standard of care offered to seniors and disabled Americans is unparalleled. We look forward to your partnership in ongoing work to support Medicaid PCS patients and high-quality providers.

Sincerely,



Sean Casten
Member of Congress



Debbie Dingell
Member of Congress



Eleanor Holmes Norton
Member of Congress



Jamaal Bowman, Ed.D.
Member of Congress

⁷ Centers for Medicare and Medicaid Services, & Centers for Medicare and Medicaid Services Medicaid Program; *Ensuring Access to Medicaid Services Proposed Rule*.

⁸ Centers for Medicare and Medicaid Services, & Centers for Medicare and Medicaid Services, Medicaid Program; *Ensuring Access to Medicaid Services Final Rule*.



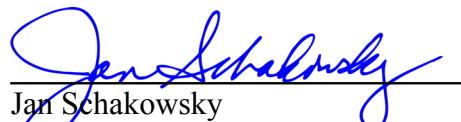
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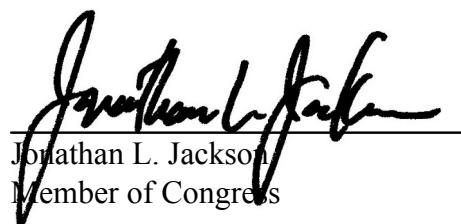
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