

You Had Me At '***Notice of
Proposed Rulemaking***' –
ADvancing States 2023
Public Policy Update



Agenda



Congressional & Executive Agency Updates



Aging Policy Updates



Medicaid LTSS Policy Updates



Q&A/Discussion

CARE

FEE NPRM OAA MEDICARE HRSN
LIMIT SCHEDULE ELIGIBLES OAAPS APS DEMENTIA ACCESS
NURSING STRATEGY DEBT MANAGED QUALITY DUAL
HOME CAREGIVING ORDER STAFFING NATIONAL DIRECT
EV EXECUTIVE APPROPRIATIONS WORKERS
FLEXIBILITY PANDEMIC UNWINDING
NAMRS MEDICAID



Congressional Updates

Recent Proposed Legislation

Recent proposed legislation has addressed:



Individuals Dually Eligible for Medicare & Medicaid



Access to Home and Community-Based Services



Direct Care Workforce



Elder Justice Act Reauthorization

Federal Budget

FY2023

- Provided modest increases for many aging & disability programs
- First-time APS formula grants; extended MFP and HCBS impoverishment spousal protections

Debt Limit Deal

- Fiscal Responsibility Act (FRA) set spending caps for FY2024 and 2025
- Automatic penalties (“sequester”) if CR in effect on Jan. 1, 2024, or 2025

FY2024

- House approach: aiming for FY2022 levels, which are below those agreed to in FRA agreement
- Senate approach: generally sticking to FRA levels, looking at small increases



Executive Agency Actions

Executive Order on Increasing Access to High-Quality Care and Supporting Caregivers

- On April 18, 2023, President Biden issued an Executive Order on increasing access to high-quality care and supporting caregivers.
- Goals of the Executive Order included:
 - Make childcare and long-term care more accessible and affordable.
 - Improve access to home-based care for veterans.
 - Enhance job quality for long-term care workers.
 - Support family caregivers.
 - Advance domestic workers' rights.
 - Engage affected communities.



Federal Rulemaking Process

Agency develops proposed rule

Public comment period

Final rule published in Federal Register

Proposed rule published in Federal Register

Agency develops final rule

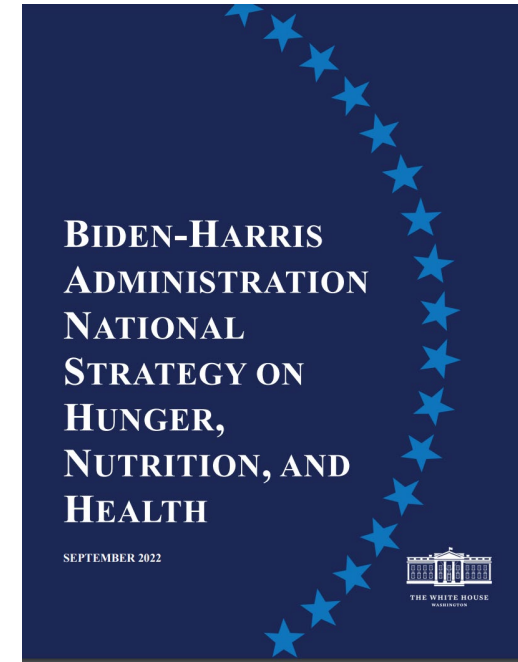
Rule is finalized

National Strategies



National Strategy to Support Family Caregivers

- Released Sep. 2022
- Required by RAISE Family Caregivers Act
- Numerous companion documents
- Over 350 actions by Federal agencies to implement



National Strategy on Hunger, Nutrition, and Health

- Released Sep. 2022
- Extension of 1st WH Conf. on Hunger, Nutrition and Health in over 50 years
- Mentions increasing funding for OAA nutrition programs



Aging Policy Updates

OAA Notice of Proposed Rulemaking (NPRM)

OAA NPRM

Published in the Federal Register on June 16, 2023

- Comments to ACL accepted through August 15, 2023

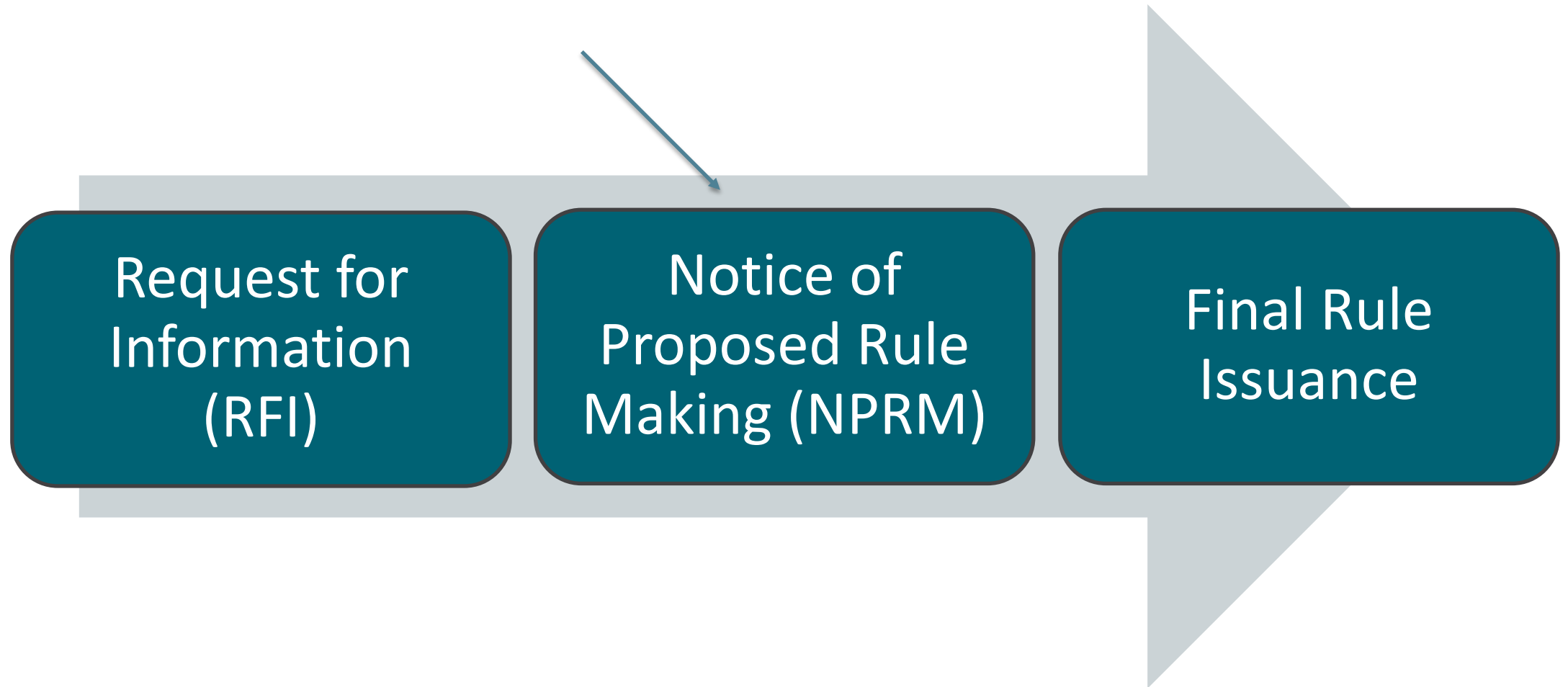
NPRM applies to Title III, VI, and VII

- Does not specifically apply to Title IV, V

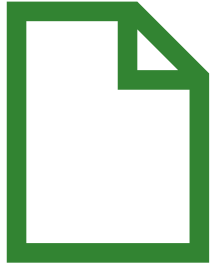
First update to OAA regulations, except for LTCOP, since 1988

- 7 amendments, 5 reauthorizations during intervening period

How we got here



OAA NPRM



83 pages (40 preamble, 43 actual NPRM)

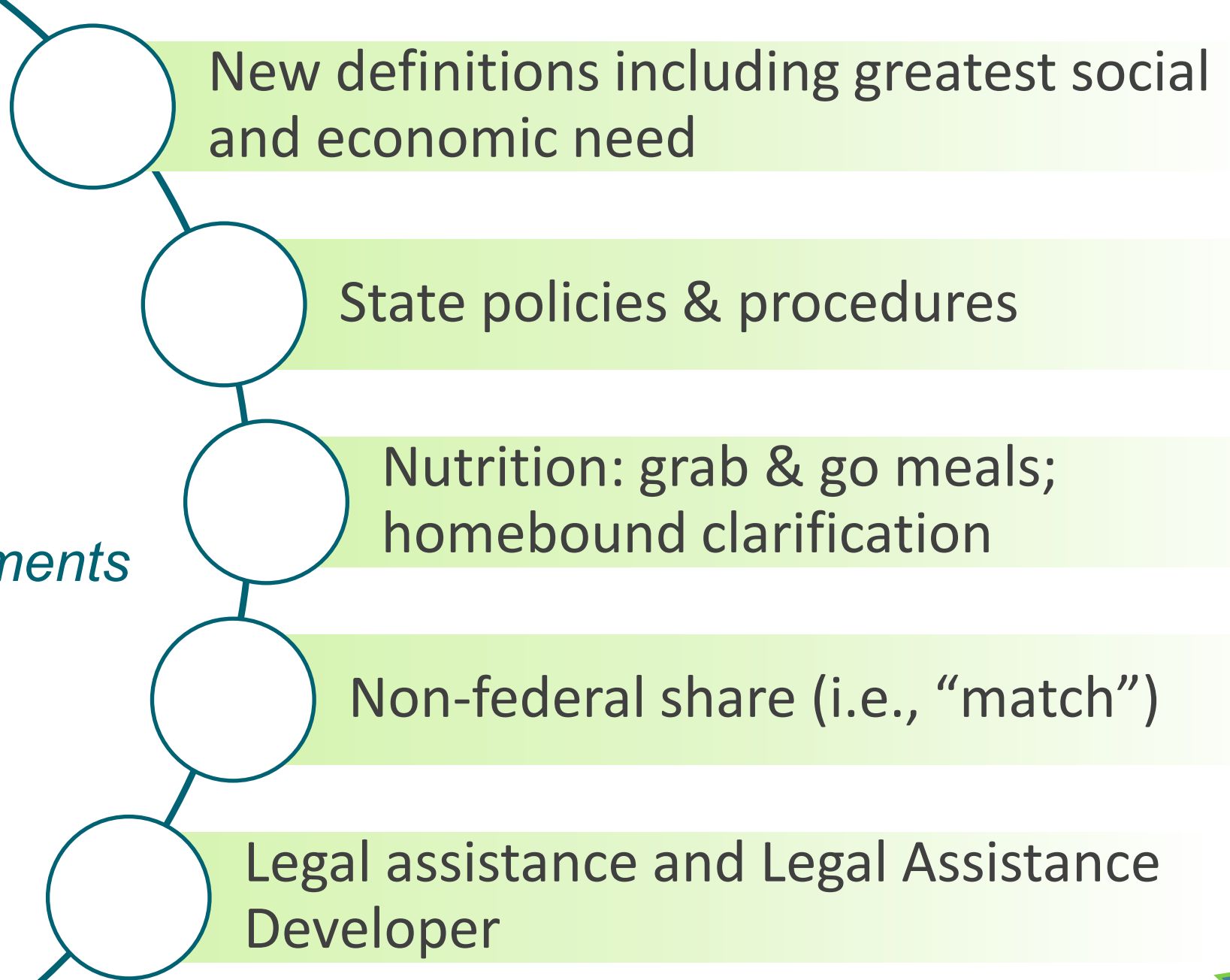
Broken out as follows:

- I. Background
- II. Statutory and Regulatory History
- III. Reasons for Proposed Rulemaking
- IV. Grants to State and Community Programs on Aging
- V. Grants to Indian Tribes for Support and Nutrition Services
- VI. Grants for Supportive and Nutritional Services to Older Hawaiian Natives
- VII. Allotments for Vulnerable Elder Rights Protection Activities
- VIII. Required Regulatory Analyses



OAA NPRM

Proposed Requirements



General ADvancing States Comments

- ADvancing States strongly supported and appreciated ACL's efforts to update OAA regulations
- State aging agencies will require significant time to come into compliance – therefore, we requested the effective date for the Final Rule be no sooner than **four years** after promulgation
- ADvancing States recommended ACL **fund** a technical assistance **resource center** to support state aging agency implementation of the Final Rule



Link to our comments: <http://www.advancingstates.org/policy/federal-advocacy/advocacy-alerts/advancing-states-submits-comments-proposed-older-americans>

Other Aging Issues



OAA COVID Supplemental \$s

LEGISLATION	NUTRITION	SUPPORTIVE SERVICES	CAREVIGER SUPPORT	OTHER
FFCRA	\$250 million -\$160 HDM -\$80 CM -\$10 Native American nutrition	X	X	X
CARES	\$480 for nutrition \$20 million for Native American nutrition	\$200 million for supportive services	\$100 million for caregiver supports	\$50 million for ADRCs \$20 million for elder rights including LTCO
Consolidated Approps. Act 2021	\$168 for HDMs \$7 for Native American nutrition	X	X	X
ARPA* *Must be spent by Sep. 30, 2024	\$750 million for nutrition	\$460 million for supportive services	\$145 million for caregiver supports	\$44 million for disease prevention \$25 million for Tribal Orgs. \$10 million for LTCOP

Will OAA funding be adequate to meet demand?

- **Major factors impacting:**
 - Inflation (cost of food, fuel especially)
 - Lack of volunteers and paid direct care workers
 - Increasing older adult population
 - Level or only modestly increased funding



APS Notice of Proposed Rulemaking

Background:

- Supplemental COVID-19 appropriations in CAA and ARPA; First-ever APS formula grants
- Statutory authority: Elder Justice Act (EJA)
- National Adult Maltreatment Reporting System (NAMRS)
- APS voluntary guidelines released in 2016 and updated in 2020

What We Expect

- Anticipate the release of the NPRM in late August or early September
- Codifying voluntary guidelines, reporting through NAMRS
- Updating/modernizing language
- Relatively light touch due to small amount of Federal \$s

Older Americans Act Reauthorization





Medicaid LTSS Updates

PHE Unwinding

PHE Unwinding

Eligibility Redeterminations

- Continuous enrollment ended March 31, 2023.
- As of April 1, 2023 states must resume normal operations for eligibility renewals and terminations.
- States have until May 31, 2024 to complete redeterminations for Medicaid recipients.

End of Policy Flexibilities

- States are unwinding policy flexibilities.
- States are making some flexibilities permanent.
- **CMS recently announced an extension to the expiration of Appendix K flexibilities for 1915(c) waiver programs.**

PHE Unwinding

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop: S2-26-12
Baltimore, Maryland 21244-1850



SMD# 23-004

**RE: Extension of 1915(c) Home
and Community-Based Services
Waiver Appendix K Expiration
Dates**

August 2, 2023

Dear State Medicaid Director:

The Centers for Medicare & Medicaid Services (CMS) is issuing the following guidance to states as they take actions to return to normal operations after the end of the flexibilities available to support states and beneficiaries during the COVID-19 Public Health Emergency (PHE). Specifically, this guidance announces an update to CMS's policy regarding the end date for flexibilities approved in states' section 1915(c) Home and Community-Based Services (HCBS) waiver Appendix K amendments. Under our prior policy, these flexibilities were set to expire six months after the expiration of the COVID-19 PHE. However, as described below, these flexibilities may remain in effect for a longer period of time.

States have relied extensively throughout the PHE on flexibilities permitted under Appendix K to authorize actions in their home and community-based services programs such as the use of telehealth or remote service provision, increased payment rates, expansion of self-direction service delivery models, addition or expansion of services, and expansion of provider networks to include family members and legally responsible individuals. In prior guidance¹, CMS indicated that the Appendix K authority for COVID-19 provisions would expire no later than six months after the expiration of the PHE. Given the end of the PHE on May 11, 2023, Appendix K authority would expire on November 11, 2023.

PHE Unwinding

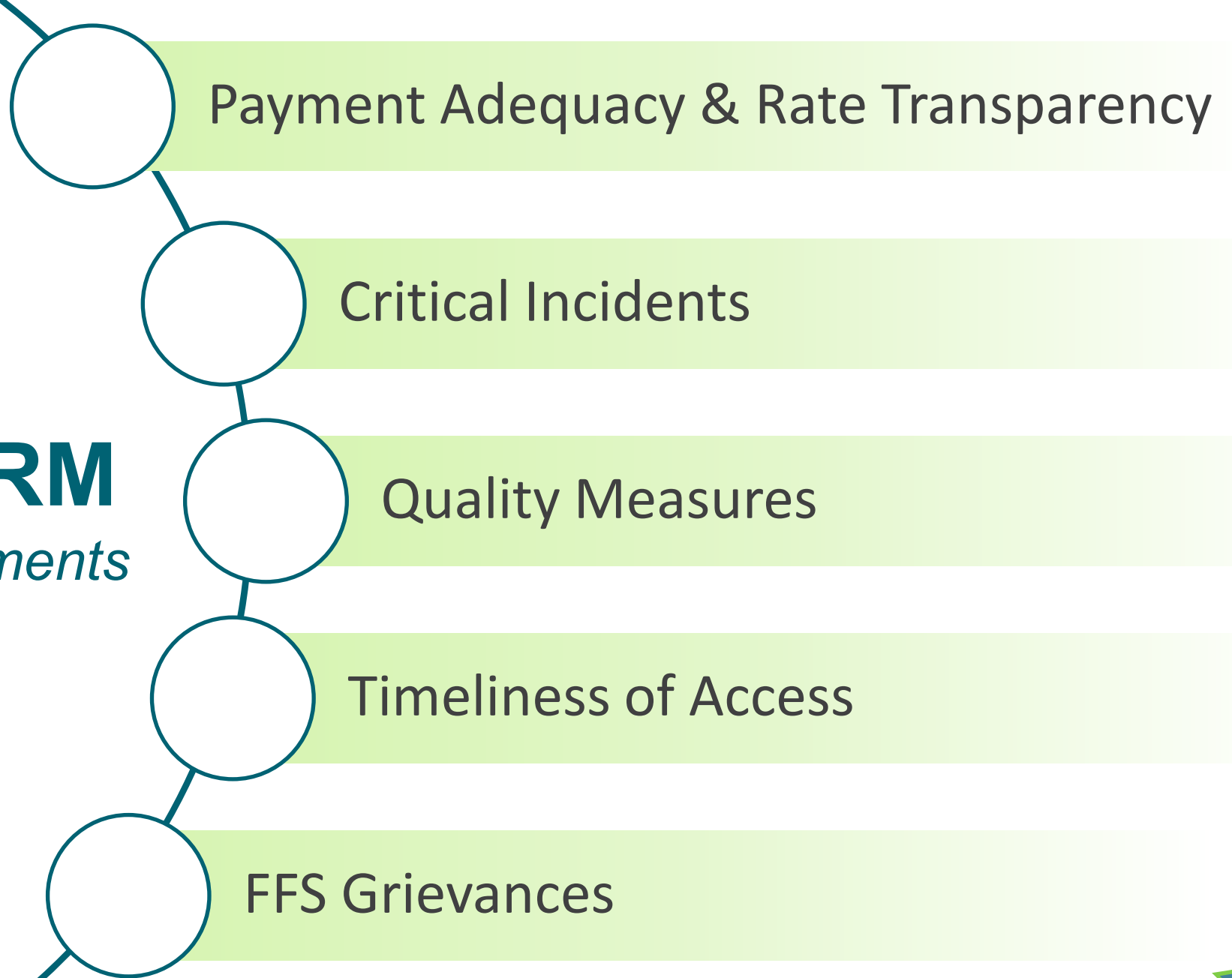
ARPA Spending

- ARPA provides states a temporary increase in federal matching funds for certain Medicaid HCBS expenditures through March 31, 2025.
- States must not violate Maintenance of Effort requirements when unwinding COVID policy flexibilities.
- Every state has a different plan and timeline for using the funds.

Notices of Proposed Rulemaking

Access NPRM

Proposed Requirements



Summary of ADvancing States Comments

- We strongly support the intent of the NPRM to improve access and quality of service delivery, and improve health outcomes.
- We believe that to successfully implement the proposed requirements, states need additional time and guidance from CMS.

Link to our comments: <http://www.advancingstates.org/policy/federal-advocacy/advocacy-alerts/advancing-states-submits-comments-proposed-medicaid-access>

Other NPRMs: *Recent/Currently Posted*

Managed Care NPRM

- Would require annual payment rate analysis for personal care, homemaker, and home health aide services
- Would require a remedy plan for any managed care plan that has an access issue
- Would require states to create a “one-stop-shop” website where beneficiaries can access information about Medicaid eligibility and managed care

Medicaid Drug Rebate Program (MDRP) NPRM

- Would create a drug price verification survey

Medicare Fee Schedule NPRM

- Would create a new caregiver training service

Other NPRMs: *Upcoming*

Nursing Facility Staffing

- Expect CMS to propose minimum staffing requirements for nursing facilities

APS

- Anticipate release in late August or early September
- Expect impact to critical incident management and coordination/collaboration with Medicaid agencies

Other Medicaid HCBS Updates

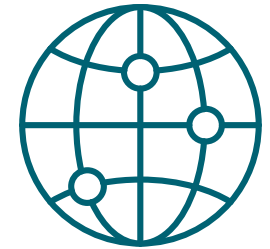
HCBS Settings Rule

- The compliance deadline was March 17, 2023.
- Four states are still working toward final approval of their statewide transition plan (STP).
- Many states are still working to achieve full compliance through the corrective action plan (CAP) process. As of Aug. 16, 2023:
 - 44 states requested a CAP.
 - 25 states have received CAP approval.
 - 3 states have withdrawn CAP request.
- The heightened scrutiny review process is ongoing.



Electronic Visit Verification (EVV)

EVV implemented for personal care services on Jan. 1, 2021



Under good faith effort exemption, EVV will implement for home health care services (HHCS) on Jan. 1, 2024



Quality of Services

Quality Measures

- CMS introduced new quality measure set for Medicaid HCBS to promote use of consistent, standardized measures.
- CMS developing and maintaining LTSS measures

Health & Welfare Site Visits

- CMS has resumed health and welfare visits.
- Reviews consider reporting of critical incidents, abuse, neglect, and exploitation.

Critical Incident Management Survey

- CMS is expected to issue a survey for states to complete regarding their critical incident management systems.

Open Discussion



Thank you!

