Federal Policy Developments: It's All About Access

Barbara Merrill, CEO

August 30, 2023

We Are:

- Over **2,100 providers strong!**
- **54 State Provider Associations**
- **Fourteen 100% State Associations (CO, CT, IA, IL (2), MA, ME, OH, OR, PA (2), KS, MO, NY)**


POP
QUIZ

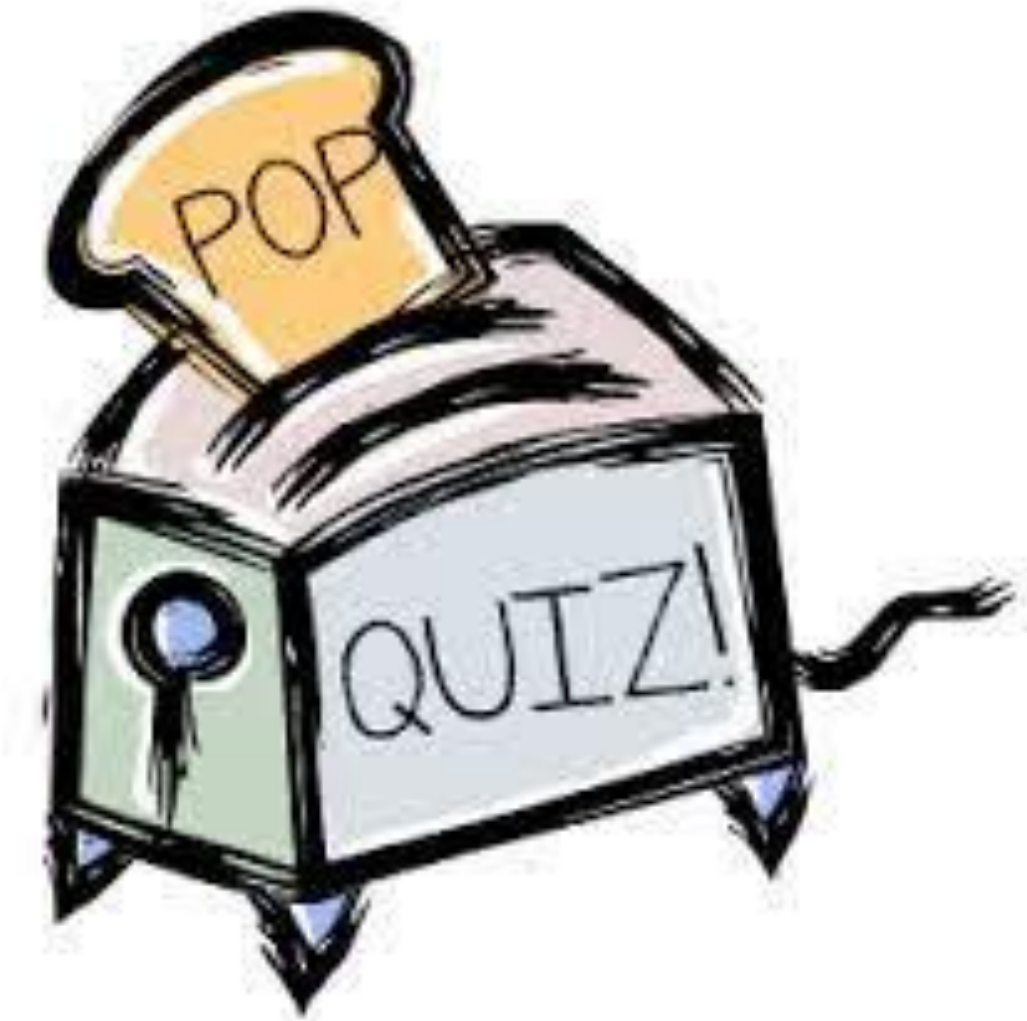
Why Did I include a Picture of a Tent on my Previous Slide?

A. ANCOR is Non-Partisan

B. ANCOR Members Include Providers Across the Spectrum of Service Delivery Models

C. Tents are Great for Parties

Speaking of Parties…


POP
QUIZ!

Which One Was Me?


QUIZ!

Who or what is the thing on the far right?

- A Lobster
- The Ghost of the Alliance Past
- Matt VanAuken trying out his next career
- The Just Re-Elected ANCOR State Association Executive Liasion to the ANCOR Board of Directors

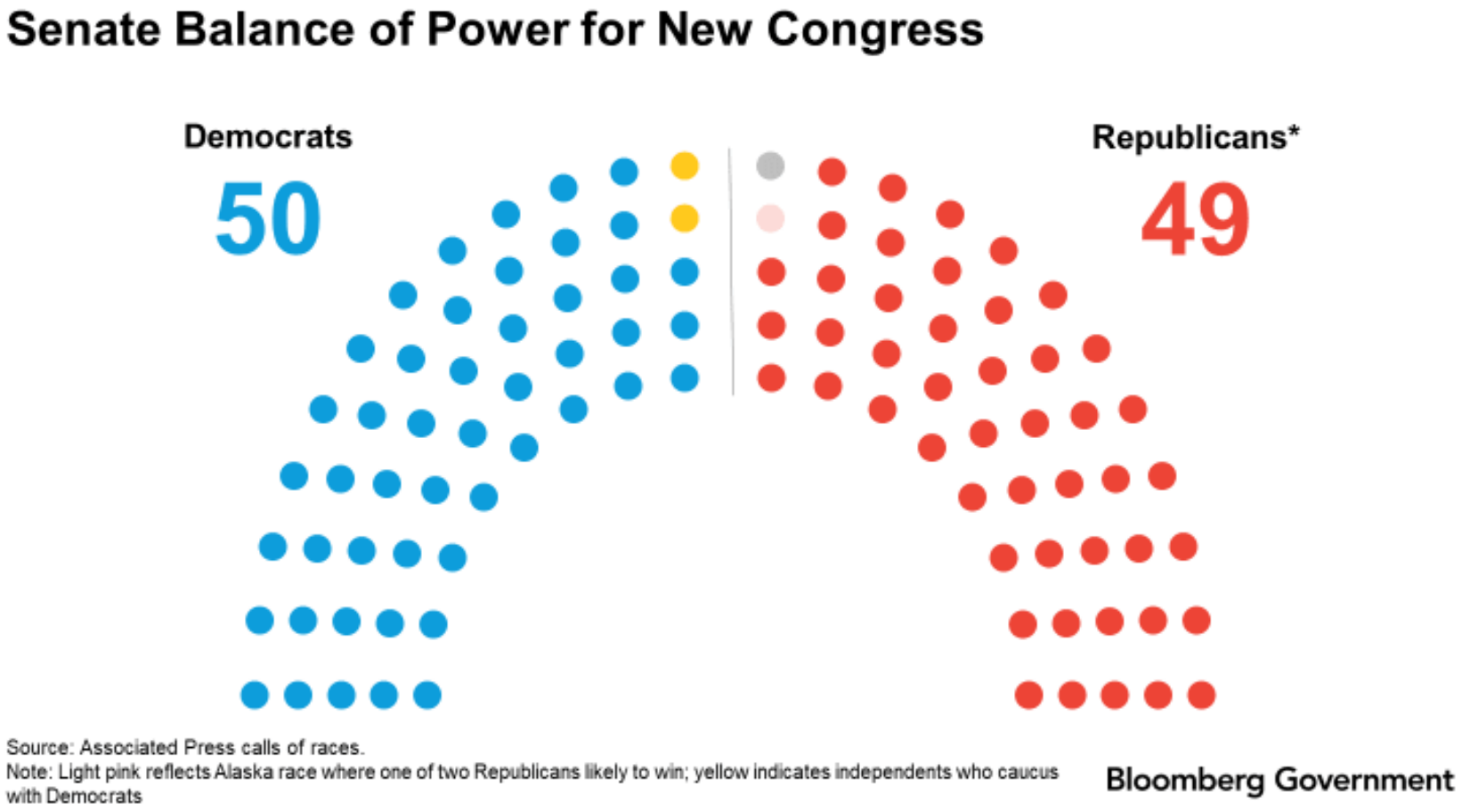
ANCOR's 2023 Policy Priorities Overview

1

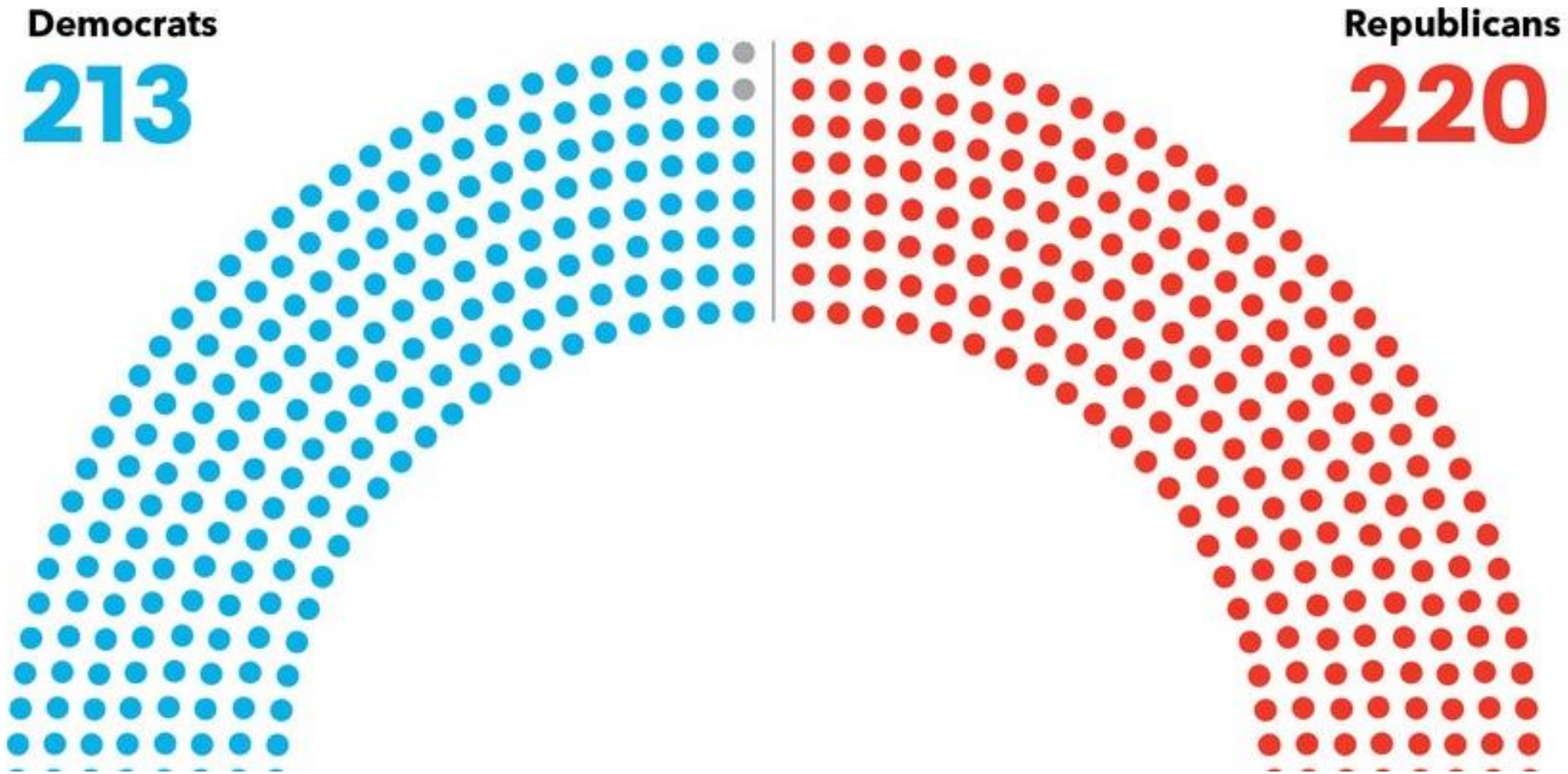
Priorities

- Strengthen the Direct Support Workforce
- Expand and Strengthen HCBS Infrastructure

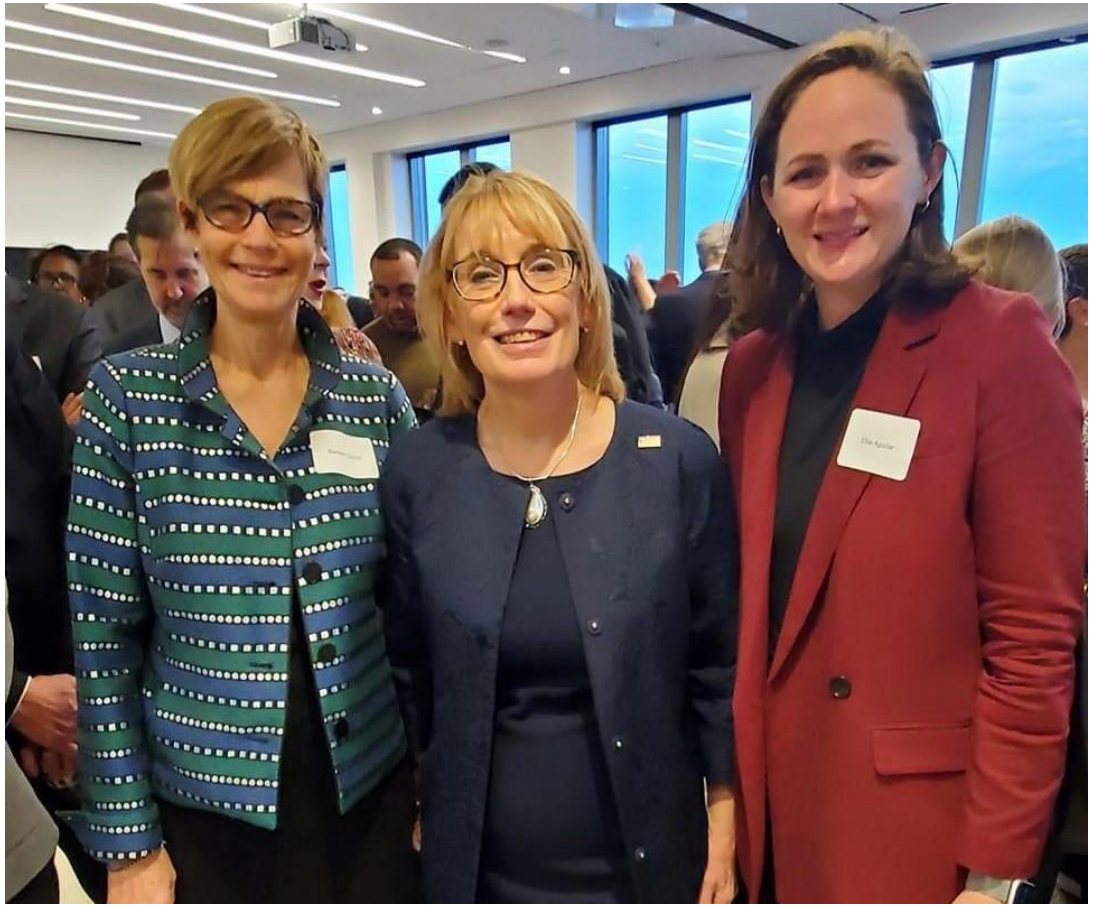
118th Congress: Balance of Power in the Senate



118th Congress: Balance of Power in the House



2023 Swearing In Ceremonies

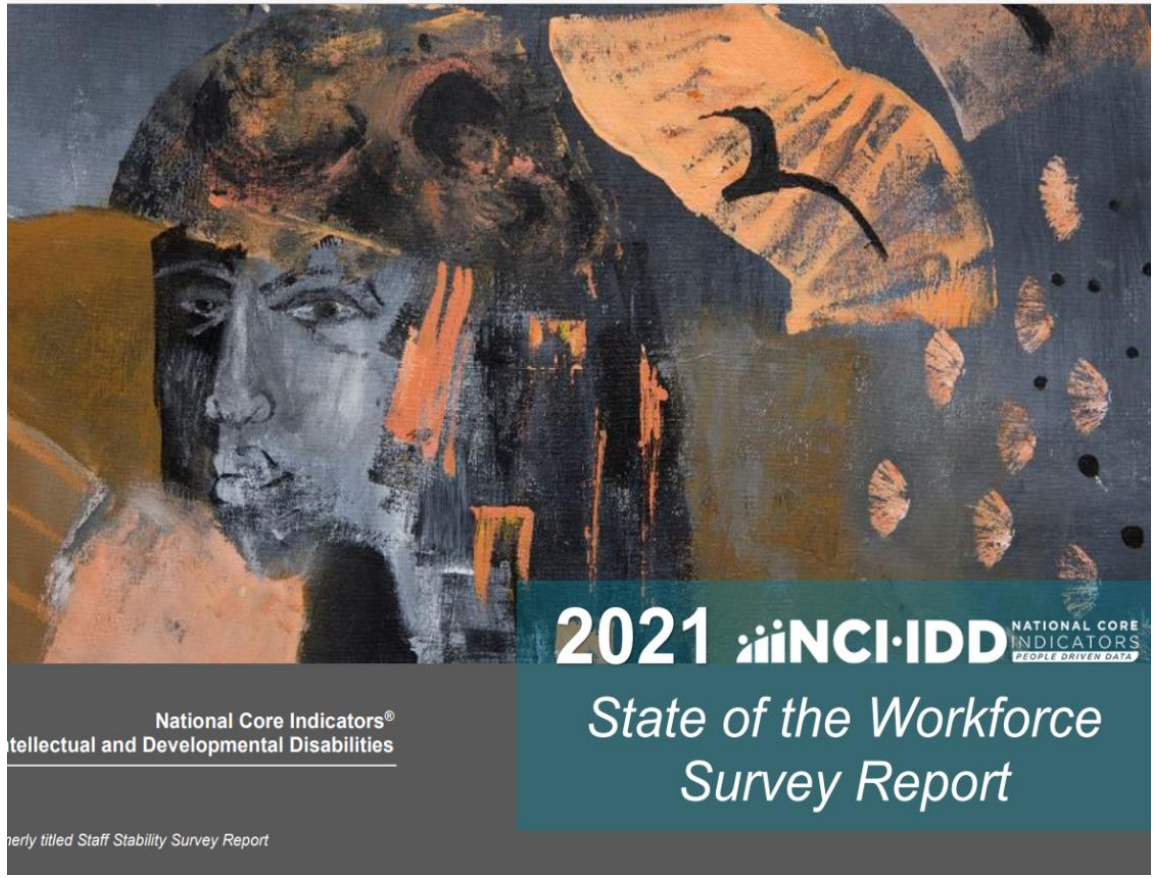


- The urgency of the DSP crisis informs ANCOR's position on virtually every issue, initiative, education offerings, tools for members
- **Since 2001 we have led with the message: *quality services require a stable, quality workforce***

Our Focus: DSP Workforce Emergency

- Proposed AccessRule
- SOC Legislation
- HCBS Settings Rule
- Flexibility
- Funding
- Immigration
- Technology

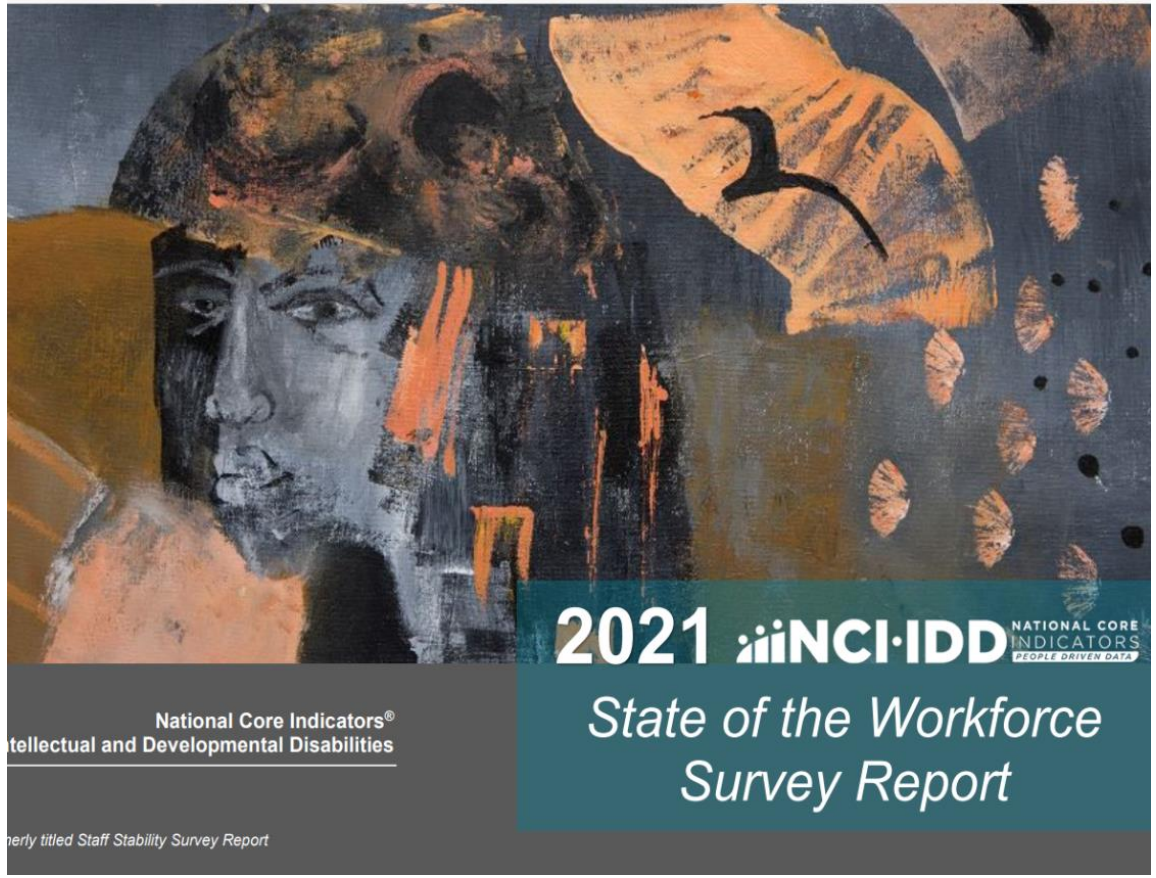
DSP Turnover 2021 Data - 29 States Reporting



Turnover: 43.3%

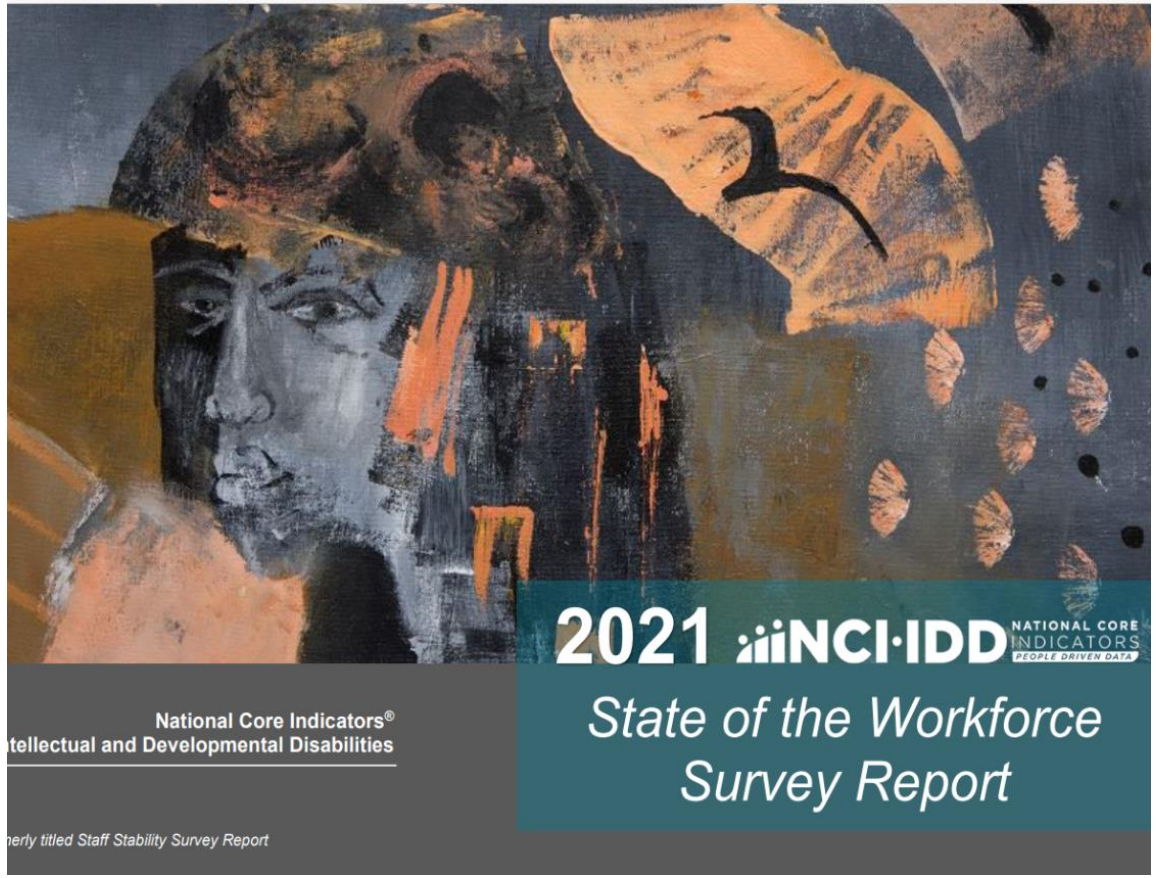
Vacancy: 20.3%

DSP Turnover 2021 Data - 29 States Reporting



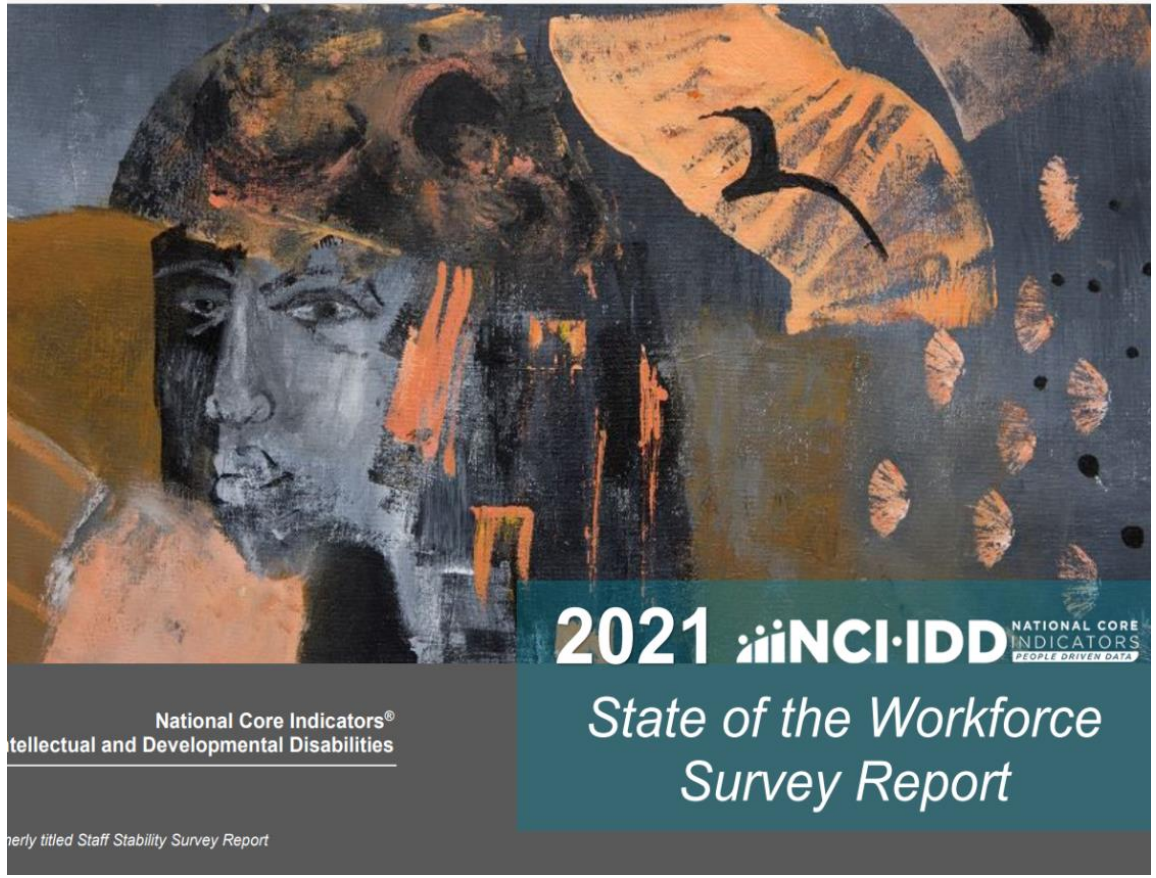
National Average Wage: $14.50

DSP Turnover 2021 Data - 29 States Reporting



- Lowest:
  DC: 28.5%
- Highest:
  Wyoming 59%

DSP Vacancy Rate 2021 Data - 29 States Reporting



- National Average for FTE: 16.5%
- National Average for PTE: 20.3%

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Industry Issues & Trends:

The State of America's Direct Support Workforce Crisis ~ 2022

83%

of providers are turning away new referrals (a 25.8% pre-pandemic increase.)

63%

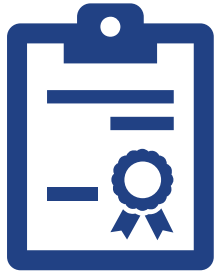
of providers are discontinuing programs and services (an **85.3%** pre-pandemic increase.)

55%

of providers are considering additional service discontinuations.

Industry Issues & Trends:

The State of America's Direct Support Workforce Crisis ~ 2022

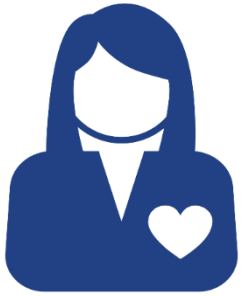


92%

of providers are struggling to achieve quality standard (a 33.3% pre-pandemic increase.)

66%

of providers are concerned vacancy/turnover rates will increase with the end of the PHE.



55%

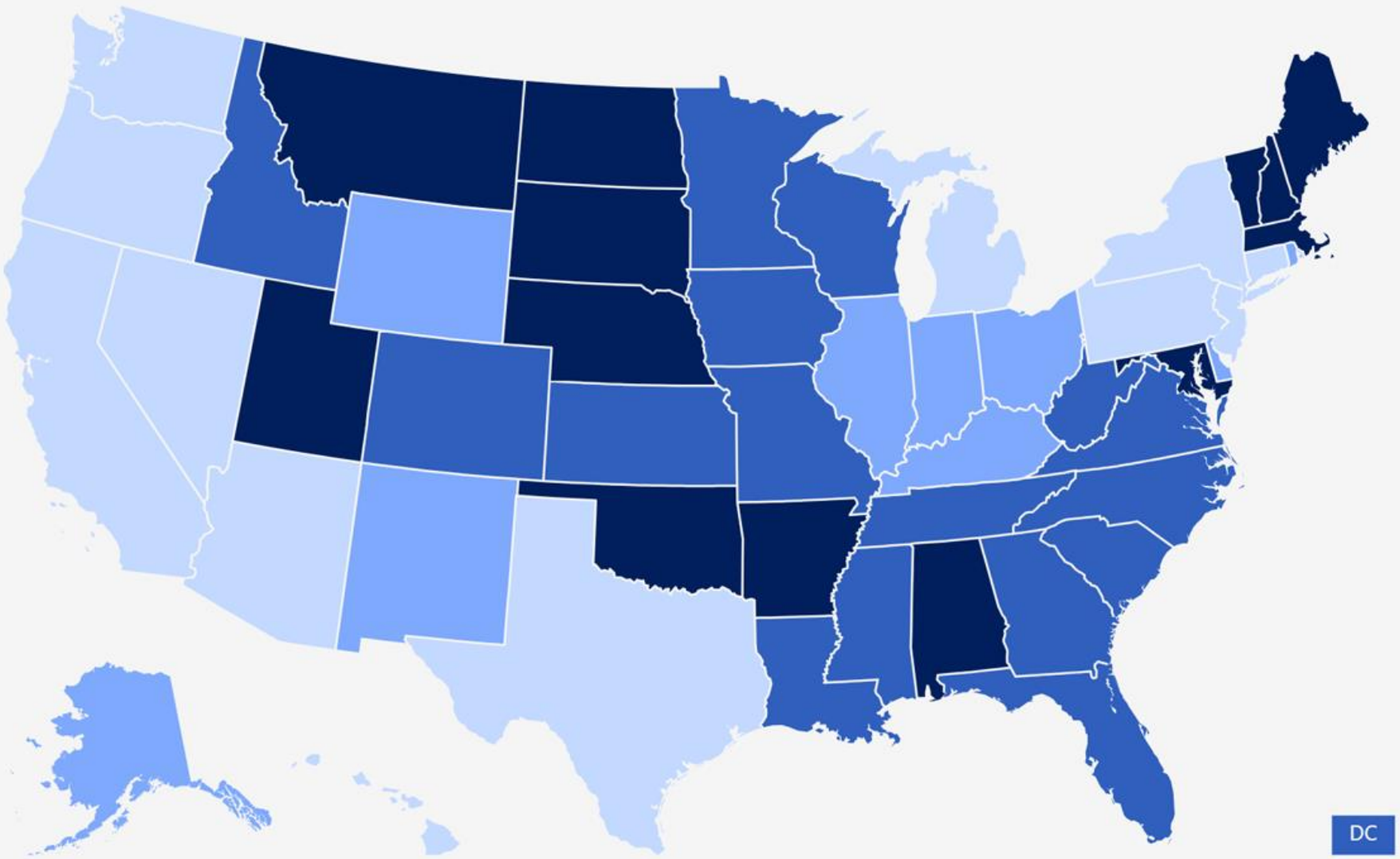
of respondents who offer case management in addition to LTSS are struggling to find available providers.

Workforce Uses for Pandemic Relief

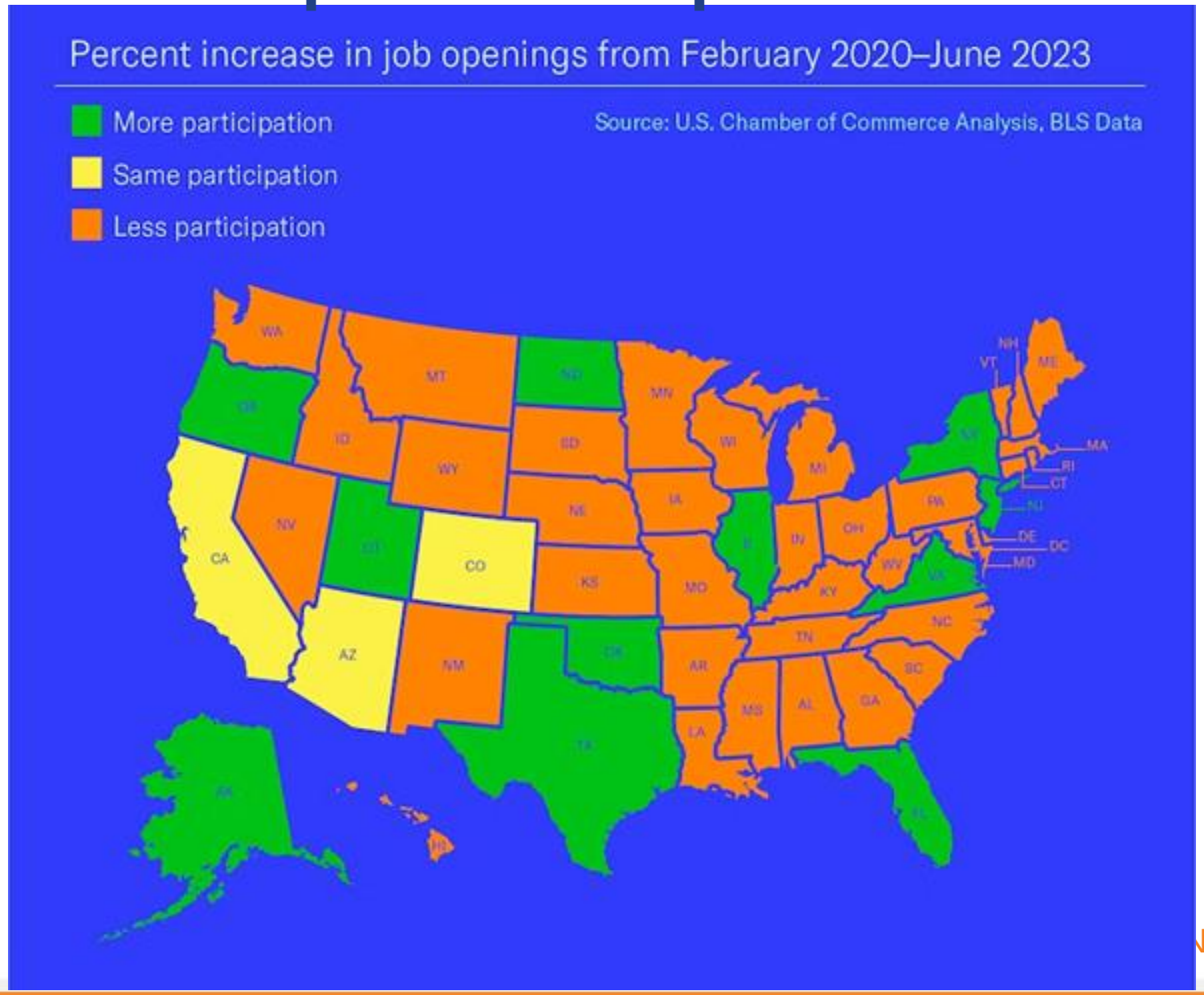
- **85%** of respondents reported receiving some form of one-time federal pandemic relief funding:
  - **72.3%** invested in one-time wage increases
  - **75.3%** invested in one-time workforce bonuses
  - **59.1%** invested in one-time hiring incentives
  - **26.9%** invested into training/prof development

6.2% of providers indicated they were unable to invest in workforce initiatives due to financial strain.

THE big PICTURE


DC
Worker Shortage Index
Least Severe
Severe
More Severe
Most Severe

Labor Force Participation Compared to Pre-Pandemic



Labor Force Participation Compared to Nat'l Average

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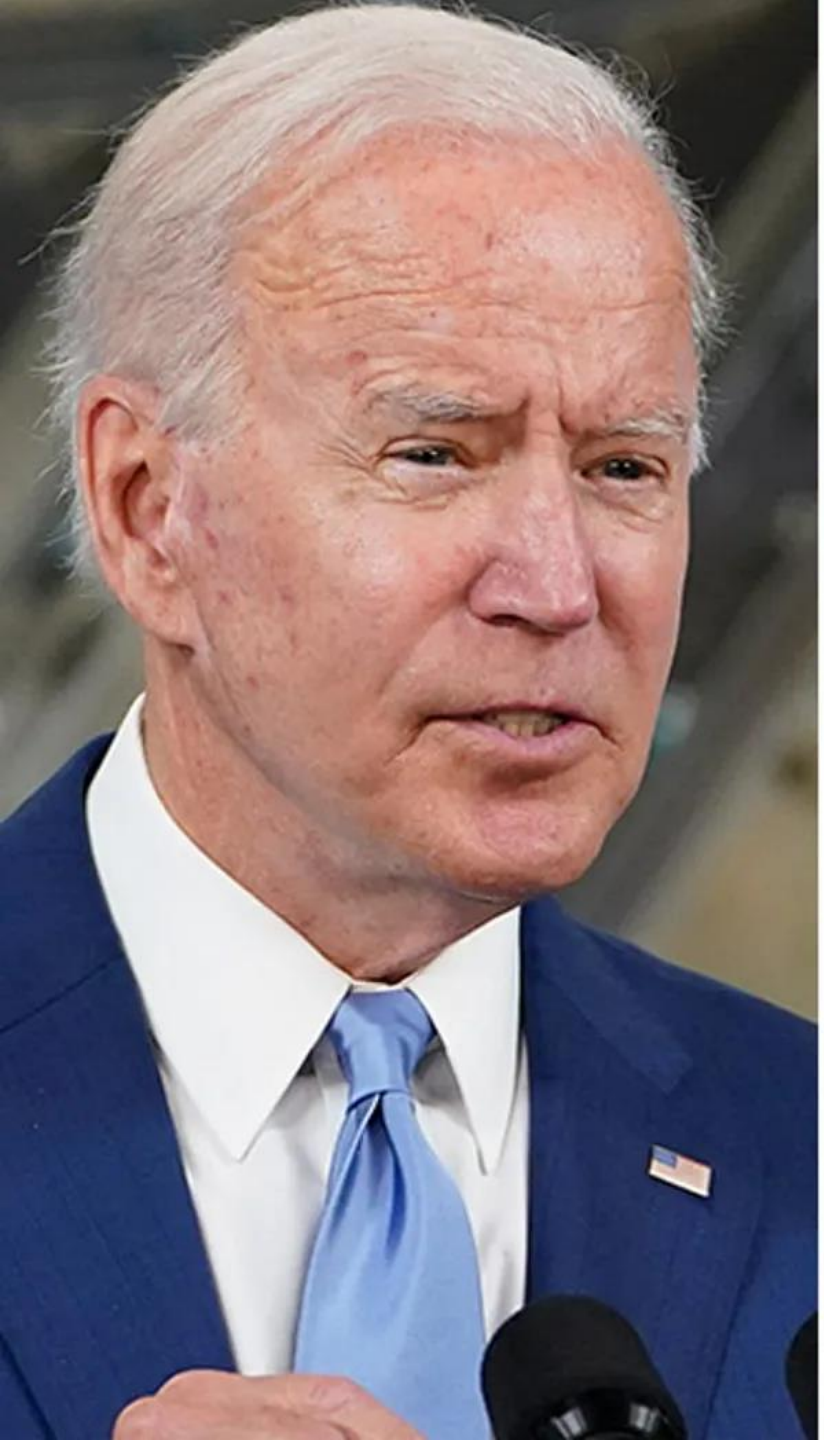
AMERICAN
JOBS PLAN
AMERICAN
JOBS PLAN
AMERICAN
JOBS PLAN




Plan A
Plan B


CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES

Regulating Access

In 1989, the equal access provision was put into statute which currently reads that a Medicaid state plan must:

"… assure payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area;" 42 USC §1396a(30)(A)

HCBS Payment Adequacy (80/20)

- State Medicaid agencies will be required to demonstrate that payment rates for HCBS under 1915(c) ensure a **sufficient direct care workforce** to meet the needs of beneficiaries and provide access to services in accordance with the amount, duration, and scope specified in the person-centered service plan.
- For personal care, homemaker, and home health aide services, the state must demonstrate that at least 80% of all payments is spent on compensation for the direct care workforce.

(b) ***Included services.*** Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

(1) Case management services.

(2) Homemaker services.

(3) Home health aide services.

(4) Personal care services.

(5) Adult day health services.

(6) Habilitation services.

(7) Respite care services.

(8) Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

(9) Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

We considered whether the proposed requirements at § 441.302(k)(3)(i) related to the percent of payments going to the direct care workforce should apply to other services, such as adult day health, habilitation, day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services for individuals with chronic mental illness. However, these services may have facility or other indirect costs for which we do not have adequate information to determine a minimum percent of the payment that should be spent on compensation for the direct care workforce. We request comment on whether the proposed requirements at § 441.302(k)(3)(i) related to the percent of payments going to the direct care workforce should apply to other services listed at § 440.180(b). In particular, in recognition of the importance of services provided to individuals with intellectual or developmental disabilities, we request comment on whether the proposed requirements at § 441.302(k)(3)(i) related to the percent of payments going to the direct care workforce should apply to residential habilitation services, day habilitation services, and home-based habilitation services.

ANCO

ANCOR's Comments:

Acknowledged CMS's efforts to address the direct support workforce crisis

- Workforce crisis as barrier to access

We support efforts to improve quality, transparency & consistency, including:

- Requiring payment rate transparency
- Reporting on key metrics related to waiting lists for HCBS
- Establish a critical incident tracking and reporting system

Addressing the HCBS Payment Adequacy Provision

- **Concerns over payment adequacy provision**
  - Impact on providers
  - Uncertainty in application

- **Urge CMS to strengthen access by addressing the root cause of the workforce crisis**
  - Address stagnant and insufficient Medicaid payment rates that do not include adequate funding for competitive wages


QUIZ
TIME

996

A. Beer Cans Left in the Hospitality Suite Last Night

B. Pounds Matt VanAuken Has Lost Since Last Year

C. Steps Between Here and Building #4

D. Leadership Positions Josh Rael Holds with ANCOR

ANCOR Members Were LOUD!!

996

Individual Comments from ANCOR Supporters **Representing 44.56% of all total comments.** This does **not** include comments from ANCOR provider agencies and non-ANCOR members

What Did Other Key Groups Say?

- NASDDDS: Do NOT include Habilitation
- NADSP: Yes, Please do include Habilitation. “We Implore you to”
- Medicaid Directors: “CMS should consider alternative approaches, such as a scaling threshold based on provider size, rural/urban status, risk of closure, and/or an exceptions process for small providers.” Also extend implementation to 5 years
- AFSME: Strongly Support 80/20, Include Habilitation
- SEIU: Strongly Support 80/20, not specific mention of including Habilitation
- ASAN: “Without additional rate increases, pass-through risks reducing providers’ funds, causing them to cut critical elements of service provision, including training, oversight, and transportation, or to shut down entirely.”

NASDDDS Comment Summary

- Supports the intent of the 80/20
- Expressed concerns regarding the uniformity and appropriateness of the 80 percent threshold, citing examples of other states with lower thresholds that applied to specific rates rather than the entire payment.
- Emphasized the need for data reporting requirements to establish the viability of a pass-through requirement and determine an appropriate percentage that considers factors such as provider size, rural setting, and exceptions for small providers.
- Recommended considering exemptions for non-compensation expenditures and exploring data analysis by population to facilitate targeted intervention strategies.
- Proposed a phased approach, focusing on data requirements first, to allow for manageable incremental system changes and the development of enabling tools.
- Suggested a longer implementation timeline of up to six years, considering legislative changes, system development, and provider engagement and training.

Access Rule Post Comment Submission Advocacy

- 8/22 Meeting with CMS **Deputy Administrator and Director Daniel Tsai**
  - **Focus on costs related to direct care**

20% Cap on PRE and G&A if applied to I/DD Habilitation:

81%

Indicated the mandate would negatively impact their ability to provide services

79%

Indicated the mandate would negatively impact the quality of services provided

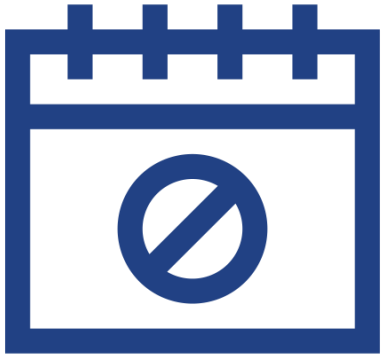
84%

Indicated they were concerned the mandate would reduce access to services

20% Cap on PRE and G&A if applied to I/DD Habilitation:

65%

Would need to reduce or eliminate quality oversight



35%

Indicated they would need to discontinue key services

31%

Indicated they would need to narrow their range of service offerings in each geographic area

General and Administrative Expenses

G&A are costs related to operations and not related to direct provision of services. Examples include:

- Administrative, accounting, and human resources staff
- Office and residential buildings, leases, and supplies and maintenance
- Electronic health record equipment, software, and maintenance
- Elevated expenses – e.g. overtime, enhanced training/clinical support, and extended workers compensation insurance

Access Rule Program Related Expenses

PRE are costs that are program specific, but not directly billable. Examples include:

- Program development and innovation
- Quality assurance and supervisory and clinical staff
- Staff training and career development activities
- Transportation and vehicle maintenance
- State and federal regulatory and statutory compliance (e.g. HCBS Settings Rule, Critical Incident Reporting, Person-Centered Planning, Electronic Visit Verification, etc.)

Unfunded Social Determinants of Health

Many providers also attempt to support social determinants of health for both people they support and the workforce:

- Rent assistance
- Food and nutrition assistance
- Life enhancement activities (e.g. community event tickets and fees)
- Transportation to community events and to see family
- Holiday traditions and expenses

Bills we initiated and/or are tracking

Active

- **The Recognizing the Role of Direct Support Professionals Act (SOC Bill)**
  - Will require OMB to consider creation of a standard occupational classification for direct support professionals; Passed Senate HSGAC, will go next to the full Senate for a vote; Introduced in House

- **Primary Care and Health Workforce Expansion Act**
  - Incorporates the **Supporting Our Direct Care Workforce and Family Caregivers Act** (Senate bill that would provide HHS-funded Grants for the retention, recruitment, and training of direct care workers); introduced by Senator Sanders for markup in Senate HELP Committee

1,230

What ELSE is Happening in the Administration?

- **DOL: focused on addressing inequities** in the workplace, with an emphasis on workplace safety and wellness.
  - Changes in the salary threshold under the **overtime rule**,
  - Permanent regulations to address **occupational exposure to COVID-19** in health care settings,
  - Worker classifications under the **Fair Labor Standards Act**.

So Many Ways to Be Engaged….

- Board of Representatives
- Government Relations Committee
- Grassroots Committee
- ANCOR Disability Champions Political Action Committee
- Alternate Payment Models Workgroup
- Housing Task Force
- ANCOR Global Council
- Professional & Organizational Development Committee
- ANCOR Foundation
- ANCOR Board of Directors

How to Engage if Policy & Politics Float Your Boat:

- **Government Relations Committee**
  - Monthly committee meetings open to all members
  - Opportunities to run for the GR Advisory Committee to get more involved!

- **Grassroots committee** – member driven, focused on ANCOR's federal policy goals and supporting state-level advocacy.
  - Over 19,260 messages sent to Congress – more than doubled our historical average for Quarter 2!

How to Engage if Policy & Politics Float Your Boat:

- **ANCOR Disabilities Champions PAC**
  - The PAC continues to grow its membership and has joined two new PAC donor programs this year, the Republican Main Street Partnership PAC and the New Democrat Coalition Action Fund PAC.
  - The PAC has also launched a new monthly newsletter this year, Across the Aisle. To join the mailing list, please email Elise Aguilar at eaguilar@ancor.org or fill out the approval form.


Join Us!
2023 ANCOR Policy Summit & Hill Day
October 10-11, 2023

Thank you!