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United States House of Representatives
Committee on Energy and Commerce, Subcommittee on Health
Hearing on "The Extenders Policies: What Are They and How Should They Continue Under a Permanent SGR Repeal Landscape?"
January 9, 2014

Chairman Pitts, Ranking Member Pallone and distinguished members of the Subcommittee on Health, I am Joe Baker, President of the Medicare Rights Center (Medicare Rights). Medicare Rights is a national, non-profit organization that works to ensure access to affordable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives.

Medicare Rights answers 15,000 questions on our national helpline each year, serving older adults, people with disabilities, and those that help them—family caregivers, social workers, attorneys and other service providers. Through our educational initiatives we touch the lives of another 140,000 beneficiaries and their families. In addition, our online learning tool, Medicare Interactive, receives approximately 1.1 million visits annually.

We appreciate the opportunity to submit a written statement on the extenders policies. These policies traditionally accompany Congressional efforts to avert steep cuts to Medicare physician reimbursement tied to the Sustainable Growth Rate (SGR) formula. We are grateful for the bipartisan, bicameral process underway to repeal and replace the flawed SGR formula. At the same time, we strongly believe that Congress must simultaneously seek a *permanent* solution for extenders benefits critical to the health and well being of people with Medicare. We urge the following:

Make the Qualified Individual (QI) program permanent. In 2011, 520,000 people with Medicare received assistance to cover the full cost of their Part B premium through the QI program.[1] This critical benefit is afforded to older adults and people with disabilities with very low incomes and limited assets. Failure to make the QI program permanent as part of an SGR reform package threatens the health and well being of the most vulnerable people with Medicare.

Beneficiaries with incomes from 120% to 135% of the federal poverty level (about $13,700 to $15,300 per year) and less than $7,080 in assets are eligible for the QI benefit, which saves them $104.90 per month. This benefit alone amounts to nearly 10% of an eligible beneficiary's income. In addition, enrollment in the QI program automatically qualifies beneficiaries for the Low-Income Subsidy of

[1] Park, E. and Solomon, J., "Expiring Medicaid and CHIP Provisions Should Be Extended in End-of-Year Legislation," (Center on Budget and Policy Priorities: December 2013), available at: http://www.cbpp.org/cms/?fa=view&id=4056

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Medicare Part D, also known as Extra Help. According to the Social Security Administration, access to Extra Help saves low-income beneficiaries up to $4,000 per year in prescription drug costs.[2]

Medicare Rights regularly assists callers to our national helpline with applications for Medicare Savings Programs (MSPs), including the QI benefit. In 2012, our counselors helped beneficiaries secure $4.8 million dollars from MSPs and Extra Help. We know firsthand the difference that every dollar makes to older adults and people with disabilities living on low, fixed incomes—people like Mr. C.

Mr. C is a 72 year-old widower from New York City. He lives with multiple chronic conditions, including diabetes, high blood pressure and anxiety. Mr. C's monthly income amounts to only $1,300 and he has no assets. He spends $800 per month on rent and utilities, leaving just $500 to cover other expenses. Mr. C is a Medicare beneficiary without any supplemental insurance. He receives Extra Help, without which he could not afford multiple medications, and the Supplemental Nutrition Assistance Program (SNAP), which helps him afford groceries. In recent years, Mr. C underwent multiple surgeries for his diabetes resulting in several amputations.

One of Mr. C's recent hospital bills remains unpaid because he simply cannot afford the cost. Alarmed by this, Mr. C called the Medicare Rights helpline for assistance. A counselor determined that he was eligible for the QI program and helped him apply for the benefit. Receipt of this $104.90 monthly subsidy will make an immeasurable difference in Mr. C's life, allowing him to afford unpaid bills and cover basic needs that would otherwise go unmet.

Unlike other Medicare Savings Programs, the amount of federal funding available for the QI program does not automatically increase based on inflation and growing need, and Congress must act annually to ensure that federal funding for QI continues. States receive block grants based on need to provide QI benefits, meaning that once a state's funding is spent, no new eligible beneficiaries can enroll.

Historically, the QI program has been extended alongside an annual vote to undo Medicare physician payment cuts mandated by the SGR, known as the "doc-fix." The QI program should be made permanent to provide stability to both state governments and to low-income people with Medicare, like Mr. C. Congress must secure the future of the QI program alongside a permanent SGR fix, or risk threatening the basic health and economic security of vulnerable retirees and people with disabilities.

Find a permanent solution for the Medicare therapy exceptions process. Another critical extension that traditionally occurs alongside the annual doc-fix concerns the Medicare therapy exceptions process. Medicare therapy caps serve as a significant barrier to accessing needed care for people with long-term, chronic conditions, most notably for those who require long-term therapy services. Ideally, Congress should repeal the Medicare therapy caps as part of an SGR reform package to ensure access to needed

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[2] Social Security Administration (SSA), "Extra Help with Medicare Prescription Drug Plan Costs," (2013), available at: http://www.ssa.gov/prescriptionhelp/

care for older adults and people with disabilities. In the absence of full repeal, we ask that Congress make the therapy cap exceptions process permanent.

Today, Medicare coverage for outpatient therapy services, including physical, speech language and occupational care, is limited through arbitrary per beneficiary payment caps imposed by the Budget Control Act of 1997. Since 1999, the year the caps were to be implemented, Congress has acted 10 times to avert execution of the caps. In 2005, Congress developed an exceptions process that allows beneficiaries to receive Medicare-covered therapy services above the cap when medically necessary. Like the QI program, this exceptions process is traditionally extended alongside the doc-fix.[3]

The Senate Finance Committee recently voted to approve the full repeal and replacement of the therapy caps as part of the *SGR Repeal and Medicare Beneficiary Access Improvement Act of 2013*.[4] The approved framework provides a starting point for alleviating barriers to care imposed by therapy caps. This policy requires the Secretary of Health and Human Services to implement a prior authorization medical review process for therapy providers who meet specific criteria, such as high billing patterns compared to peers or other questionable billing practices.

While the proposal must be implemented carefully to promote beneficiary access to care, this approach is a marked improvement to the current therapy caps and exceptions process. The proposal appropriately establishes standards for therapy providers, the very individuals who order and control the delivery of services, as opposed to arbitrarily limiting care on a per beneficiary basis.

We suggest that these provider standards focus solely on provider behaviors and billing practices so as not to inadvertently limit access to therapy services for beneficiaries, most notably for those with particular medical conditions. In addition, we believe that the policy would be strengthened through the addition of an appeals mechanism for instances where prior authorization is not granted.

While many of the practical details regarding implementation of the proposed policy will be developed at the agency level, we are encouraged to see anti-fraud and overutilization efforts appropriately and narrowly targeted to avoid disruptions in needed care for vulnerable beneficiaries. In sum, we hope the concept approved by the Senate Finance Committee will serve as the basis for a permanent solution to the Medicare therapy caps and exception process as part of a broader SGR repeal and replacement strategy.

In closing, as negotiations on a permanent SGR solution move forward, we urge Congress to **protect people with Medicare from higher health care costs.** A legislative proposal to repeal and replace the SGR must not be paid for by shifting added health care costs to older adults and people with disabilities.

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[3] Leadership Council of Aging Organizations, "Medicare Therapy Cap Exceptions Process Should be Made Permanent," (August 2013), available at: http://www.lcao.org/files/2013/09/FINAL-LCAO-Therapy-Caps-Exceptions-IB.pdf

[4] Senate Finance Committee, "Description of the Chairman's Mark: The SGR Repeal and Medicare Beneficiary Access Improvement Act of 2013," (December 2013), available at: http://www.finance.senate.gov/legislation/details/?id=a275e061-5056-a032-5209-f4613a18da1b

Half of all Medicare beneficiaries—nearly 25 million—live on annual incomes of $22,500 or less. People with Medicare already contribute a significant and growing share of income on health care costs. Older adults averaged out-of-pocket health care costs of nearly $4,800 in 2011, an increase of 46% since 2000.[5]

We do not support proposals to further income relate (means test) Medicare Part B and D premiums; prohibit or discourage "first dollar" Medigap coverage; raise the age of Medicare eligibility; or increase Medicare deductibles, coinsurances or copayments as offsets to pay for a permanent SGR solution. Instead, we believe that Congress should look to smart cost savers that eliminate wasteful spending, such as through the restoration of Medicare drug rebates for low-income beneficiaries.

Again, we are grateful to the Committee for embracing bipartisan negotiations to devise a permanent SGR solution. We ask you to ensure that an SGR reform package includes a permanent fix for the QI program and therapy caps, and we urge you to protect people with Medicare from higher health care costs.

Thank you for the opportunity to provide comment.

Sincerely,

Joe Baker
President
Medicare Rights Center

[5] Cubanski, J. "An Overview of the Medicare Program and Medicare Beneficiaries' Costs and Service Use," (Kaiser Family Foundation: February 2013), available at: http://kff.org/health-costs/event/testimony-an-overview-of-the-medicare-program-and-medicare-beneficiaries-costs-and-service-use/; Administration on Aging (AoA), "A Profile of Older Americans: 2012," (DHHS: 2012), available at: http://www.aoa.gov/AoARoot/Aging_Statistics/Profile/2012/docs/2012profile.pdf