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June 5, 2019

The Honorable Lamar Alexander
Chairman
U.S. Senate
Committee on Health, Education,
Labor & Pensions
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
U.S. Senate
Committee on Health, Education,
Labor & Pensions
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray:

On behalf of the Medicare Rights Center, thank you for the opportunity to share our perspective as the committee considers bipartisan legislation to reduce health care costs. The Medicare Rights Center is a national, nonprofit 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. Our organization provides services and resources to nearly three million people with Medicare, family caregivers, and health care professionals each year.

Based on this experience, we know that prescription drug affordability is an ongoing challenge. Every day on our National Consumer Helpline, we hear from older adults and people with disabilities who are struggling to cover their drug costs. Given that many people with Medicare live on fixed or limited incomes that cannot keep pace with high and rising drug prices, the perennial nature of these calls is alarming, but not surprising.

Currently, half of all Medicare beneficiaries—nearly 30 million older adults and people with disabilities—live on $26,200 or less per year, while one quarter have incomes below $15,250 and less than $14,550 in savings.[1] At the same time, health care costs are taking up a larger and more disproportionate share of beneficiaries' limited budgets. In 2016, nearly 30% of Medicare households spent 20% or more of their income on health care, while only 6% of non-Medicare households did so.[2] Out-of-pocket costs for prescription drugs represent a consequential share of this amount, accounting for nearly one out of every five beneficiary health care dollars.[3]

[1] Jacobson, Gretchen et al., Kaiser Family Foundation, "Income and Assets of Medicare Beneficiaries, 2016-2035," (April 21, 2017) available at: https://www.kff.org/medicare/issue-brief/income-and-assets-of-medicare-beneficiaries-2016-2035/.
[2] Cubanski, Juliette et al., Kaiser Family Foundation, "The Financial Burden on Health Care Spending: Larger for Medicare Households than for Non-Medicare Households," (March 1, 2018) available at: https://www.kff.org/medicare/issue-brief/the-financial-burden-of-health-care-spending-larger-for-medicare-households-than-for-non-medicare-households/.
[3] Kaiser Family Foundation, "10 Essential Facts about Medicare and Prescription Drug Spending," (January 29, 2019) available at: https://www.kff.org/infographic/10-essential-facts-about-medicare-and-prescription-drug-spending/.

With health-related expenses projected to consume a greater share of beneficiaries' income over time, if left unaddressed these affordability challenges will only worsen.[4] Already, it is not just lower-income beneficiaries who are affected by increases in prescription drug prices. In 2017, over 40% of Medicare Rights' Helpline callers who were screened for Part D assistance programs such as Extra Help did not qualify due to having income and assets in excess of the program's eligibility thresholds.[5] As the population ages and prices continue to rise, we are concerned that an ever-growing number of beneficiaries will find the cost of prescriptions, help paying these costs—or both—to be out of reach.

Immediate action is needed to reform the current drug pricing system in ways that will improve the health and economic security of current and future Medicare beneficiaries. To that end, as you prepare the *Lower Health Care Costs Act of 2019* for markup, we respectfully submit the legislative solutions below for your consideration, recognizing that some may require cross-committee coordination.

Title I: Ending Surprise Medical Bills

As part of your comprehensive efforts to end surprise medical bills, we urge you to address one such issue within the Medicare program.

Currently, Medicare patients in hospitals who are classified as "outpatients" rather than formally admitted as "inpatients" are vulnerable to unexpected bills and access barriers. This classification has no bearing on the care beneficiaries need or receive while in the hospital, but it has significant implications post-discharge.

That is because Medicare will only pay for a beneficiary's post-hospital stay in a skilled nursing facility (SNF) if the beneficiary was hospitalized for three consecutive days *and* classified as an inpatient during that time—regardless of the beneficiary's need for SNF care.

The bipartisan ***Improving Access to Medicare Coverage Act*** (S. 753/H.R. 1682) offers a much-needed, commonsense solution. It would allow the time Medicare patients spend in the hospital as "outpatients" under "observation status"—getting the same medically necessary treatment as those classified as "inpatients"—to count toward the requisite three-day hospital stay for SNF coverage. This important change would help protect beneficiaries from surprise bills and ensure they can receive needed care in the most appropriate setting.

Title II: Reducing the Prices of Prescription Drugs

The Medicare Rights Center supports the ***Strengthening Health Care and Lowering Prescription Drug Costs Act*** (H.R. 987). This legislation, which includes the ***Creating and Restoring Equal Access to Equivalent Samples (CREATES) Act*** (S. 340/H.R. 965) and the ***Protecting Consumer Access to Generic Drugs Act*** (H.R. 1499), would improve consumer access to lower-priced generic drugs by ending industry practices that delay these drugs from coming to the market.

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[4] Cubanski, Juliette et al., Kaiser Family Foundation, "Medicare Beneficiaries Out-of-Pocket Health Care Spending a Share of Income Now and Projections for the Future," (January 26, 2018) available at: https://www.kff.org/report-section/medicare-beneficiaries-out-of-pocket-health-care-spending-as-a-share-of-income-now-and-projections-for-the-future-report/.

[5] Riccardi, Fred et al., Medicare Rights Center, "Medicare Trends and Recommendations: An Analysis of 2017 Call Data from the Medicare Rights Center's National Helpline," (April 2019) available at: https://www.medicarerights.org/pdf/2017-helpline-trends-report.pdf.

Specifically, the CREATES Act would close loopholes that allow brand-name drug manufacturers to block the development of generic and biosimilar medications, while H.R. 1499 would ban pay-for-delay deals in which brand-name manufacturers compensate generic manufacturers for delaying market entry of their product. Together, these changes would eliminate harmful anticompetitive behaviors, improve consumer access, and generate notable savings. The Congressional Budget Office estimates legislation such as the CREATES Act could save taxpayers more than $3 billion over a decade,[6] and the Federal Trade Commission estimates pay-for-delay deals cost consumers and taxpayers $3.5 billion each year.[7]

Further, H.R. 987 would protect consumers by preventing the expansion of short-term limited duration insurance plans. Such plans are excepted from many of the Affordable Care Act's (ACA) consumer protections, coverage requirements, and insurance regulations. As a result, short-term plans can charge higher premiums based on health status, impose annual or lifetime limits, exclude coverage for the essential health benefits, and decline coverage based on pre-existing conditions.

Since they can offer a less robust benefit package and deny coverage for serious medical needs, these plans typically have lower premiums than more robust, ACA-compliant plans—which may attract younger, healthier consumers. This shift could upend the ACA's risk pools and increase costs for those who rely on the health law's consumer protections—including the estimated 40% of adults ages 50 to 64 with pre-existing conditions.[8]

In addition to re-introducing discrimination into the health care system and destabilizing the individual market, we are also concerned that increasing access to short-term plans could lead to consumer confusion. Recent research underscores this risk, and the danger these plans pose to those who purchase them.[9]

Title III: Improving Transparency in Health Care

We appreciate your efforts to increase transparency and accountability in drug pricing, and your commitment to continuing work on the ***Fair Accountability and Innovative Research (FAIR) Drug Pricing Act*** (S. 1391/H.R. 2296). Medicare Rights supports this legislation, which would require drug manufacturers to report and justify planned drug price increases. We also support the ***Prescription Drug Sunshine, Transparency, Accountability and Reporting (STAR) Act of 2019*** (H.R. 2113) which would, in part, similarly strengthen reporting requirements.

Medicare Rights agrees that drug manufacturers that choose to increase prices should be required to disclose the rationale behind those decisions. Improved access to this information could help lower costs, empower consumers, and better inform future policymaking. It would provide much-needed

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[6] Congressional Budget Office, "S. 974, Creating and Restoring Equal Access to Equivalent Samples Act of 2018,"(September 18, 2018) available at: https://www.cbo.gov/publication/54479.

[7] Federal Trade Commission, "Pay-for-Delay: How Drug Company Pay Offs Cost Consumers Billions," (January 2010) available at: https://www.ftc.gov/sites/default/files/documents/reports/pay-delay-how-drug-company-pay-offs-cost-consumers-billions-federal-trade-commission-staff-study/100112payfordelayrpt.pdf.

[8] Noel-Miller, Claire et al., AARP, "In Health Reform, Stakes are High for Older Americans with Preexisting Health Conditions," (March 2017) available at: https://www.aarp.org/content/dam/aarp/ppi/2017-01/ACA-Protects-Millions-of-Older-Adults-with-Preexisting-Health-Conditions-PPI-AARP.pdf.

[9] Georgetown University Health Policy Institute, Center on Health Insurance Reforms, "New Study: Consumers Don't Understand That Short-term Plans Lack Protections, Benefits," (April 8, 2019) available at: http://chirblog.org/new-study-consumers-dont-understand-that-short-term-plans-lack-protections/.

context for taxpayers, consumers, and policymakers about the costs and value of medications and may also incentivize companies to reassess long-standing pricing practices. We urge you to include these important reforms in the final package.

In conclusion, we commend your thoughtful, bipartisan work on the complex issue of high and rising drug prices. Medicare Rights supports many of the policies under consideration, as well as more sweeping approaches beyond the scope of your draft bill, such as allowing Medicare to negotiate drug prices, better aligning the program's payment incentives, and preventing industry gaming. We also continue to advocate for long overdue changes to the current system—including modernizing the Part D appeals process, easing eligibility for Medicare's low-income assistance programs, and capping beneficiary out-of-pocket drug spending—alongside or in advance of any systemic reforms.

We would welcome the opportunity to speak with you in more detail about these policy solutions. For more information or if we can otherwise be of assistance, please contact Lindsey Copeland, Federal Policy Director, at lcopeland@medicarerights.org or 202-637-0961.

Thank you for your leadership. We look forward to working together to improve the nation's drug pricing system in ways that prioritize consumer access and affordability.

Sincerely,

Fred Riccardi
President
Medicare Rights Center