July 12, 2017

The Honorable Mitch McConnell
Leader, U.S. Senate
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader, U.S. Senate
Washington, DC 20510

Dear Leader McConnell and Minority Leader Schumer:

On behalf of the Medicare Rights Center (Medicare Rights), I am writing to express our staunch opposition to the Better Care Reconciliation Act of 2017 (BCRA), the process that led to its development, and the secretive negotiations through which the bill is reportedly being amended. Medicare Rights 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. We provide services and resources to nearly three million people with Medicare, family caregivers, and professionals each year.

The BCRA risks access to affordable health care for older Americans, people with disabilities, and their families. The changes made to the House-passed American Health Care Act in no way ensure that near retirees and people with disabilities, including those with pre-existing conditions, will continue to benefit from the coverage expansions and consumer protections advanced through the Affordable Care Act (ACA). Indeed, according to available estimates, 22 million Americans will lose health coverage under the BCRA, and those losses will disproportionately affect people between ages 50 and 64.[1]

Recent reports suggest that an amendment to the BCRA is under consideration that would allow insurers to offer health plans on the Marketplace that forgo many essential consumer protections, so long as they offer one plan that contains such protections, most importantly the guarantee of coverage to people with pre-existing conditions and offering a core set of essential health benefits, including mental health and substance use services and preventive care, among others. We oppose this proposal, which would likely cause the cost of meaningful, comprehensive health insurance to sky rocket for the very people who need it most.

Further, because the BCRA would cut more than $770 billion from the Medicaid program over 10 years[2], we do not believe there is any suite of amendments that can rectify the underlying failures of the bill. At its core, the policies included in the BCRA reduce the availability of essential, affordable health care and coverage to our nation's older adults, people with disabilities, and their families. We urge the Senate to engage in a bipartisan dialogue, involving public input, on needed reforms to promote affordable access to health care.

[1] Congressional Budget Office, "H.R. 1628, Better Care Reconciliation Act of 2017" (June 26, 2017), *available at* https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/52849-hr1628senate.pdf.
[2] *Ibid.*

Our particular concerns with the BCRA are as follows:

Medicaid Per-Capita Caps: The BCRA rewrites the Medicaid program by way of "insufficient and unworkable"[3] per-capita caps, with potentially destructive effects on access to health care for older adults and people with disabilities. Eleven million people with Medicare rely on Medicaid to cover vital long-term home health care and nursing home services, to help afford their Medicare premiums and cost-sharing, and more.[4]

Federal cuts to Medicaid brought about by per-capita caps would drive states to make hard choices, likely leading states to scale back benefits, impose waiting lists, implement unaffordable financial obligations, or otherwise restrict access to needed care for older adults and people with disabilities. Further, a decade out, the BCRA would cut deeper and deeper into the Medicaid program, ultimately resulting in a projected deficit of over 1/3 (35%) by 2036.[5] Cuts of this magnitude would devastate the program and the people it serves.

Federal Medicaid payments for the Medicare Savings Programs (MSPs), which provide assistance with Medicare Part B premiums and cost-sharing for the lowest income beneficiaries, are exempt from the capped payments established through the BCRA. Nevertheless, important questions remain about how states would respond to the overall cuts resulting from the per-capita caps, especially those states that have opted to create a more effective and efficient safety net by exercising existing flexibilities to expand eligibility for MSPs.[6]

Coverage Options for Older Adults and People with Disabilities: Before the ACA, Medicare Rights' counselors regularly fielded calls on our national helpline from individuals not yet eligible for Medicare who were desperately seeking affordable insurance options. Most often, these calls came from Americans ages 50 – 64 who were just shy of Medicare eligibility and from people with Social Security Disability Insurance who were in the required two-year waiting period for Medicare coverage.

Since the ACA, these very same populations have been able to rely on the law's coverage expansions, including through expansion Medicaid and the federal and state Marketplaces. Nearly 3.3 million people between ages 55 and 64 have coverage through the Marketplaces, representing the largest share of enrollees nationwide—26%.[7] Over 1.5 million people with disabilities are in the Medicare two-year waiting period at any time and frequently must turn to expansion Medicaid or the Marketplaces for coverage before their Medicare takes effect.[8]

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[3] National Association of Medicaid Directors, "Consensus Statement from the National Association of Medicaid Directors (NAMD) Board of Directors on the Better Care Reconciliation Act of 2017" (June 2017), *available at*: http://medicaiddirectors.org/wp-content/uploads/2017/06/NAMD-Statement-on-Reform-Efforts-6-26-17-002-1.pdf.

[4] Centers for Medicare & Medicaid Services, "Analytic Reports and Data Resources" (last accessed March 7, 2017), *available at* https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Analytics.html.

[5] Congressional Budget Office, "Longer-Term Effects of the Better Care Reconciliation Act of 2017 on Medicaid Spending" (June 2017), *available at* https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52859-medicaid.pdf.

[6] Maura Calsyn & Stacy Sanders, "The American Health Care Act Could Chip Away At The Medicare Savings Programs," Health Affairs Blog (June 15, 2017), *available at* http://healthaffairs.org/blog/2017/06/15/the-american-health-care-act-could-chip-away-at-the-medicare-savings-programs/.

[7] Assistant Secretary for Planning and Evaluation (ASPE) Issue Brief, "Health Insurance Marketplaces 2016 Open Enrollment Period: Final Enrollment Report For the period: November 1, 2015—February 1, 2016" (March 11, 2016), *available at* https://aspe.hhs.gov/system/files/pdf/187866/Finalenrollment2016.pdf.

[8] *See* Social Security Administration, "Selected Data From Social Security's Disability Program" (last accessed March 7, 2017), *available at*: https://www.ssa.gov/oact/STATS/dibStat.html.

We are deeply concerned that the combined effect of the BCRA's changes to the Medicaid expansion and individual market coverage will cause older adults and people with disabilities to pay significantly more for health insurance or force them to go without coverage altogether. By 2023, the BCRA would end the Medicaid expansion—which now benefits 11 million Americans—by ratcheting back the federal government's matching rate. This eliminates a vital coverage option for low-income Americans who are not yet eligible for Medicare.

The BCRA permits health insurers to charge significantly higher premiums for older enrollees relative to their younger counterparts—allowing an age rating ratio of 5:1 (or more as permitted by state law) compared to 3:1 under the ACA. According to estimates, for the national average premium, hiking the age rating limit to 5:1 would increase premiums for a 64-year-old by $3,100 for an unsubsidized bronze plan and by $5,200 for a silver plan.[9] The BCRA also diminishes premium tax credits, while also eliminating cost-sharing subsidies that help low-income enrollees afford high deductibles, coinsurances, and copayments.

Considered in combination, the harm of these proposals will be borne most significantly by older, sicker, and lower-income Marketplace enrollees.[10] It is likely that many older adults will be unable to make up the difference between discriminatorily higher-priced plans, relatively smaller premium tax credits, and lacking cost-sharing assistance available under the BCRA, undoing essential coverage gains for older Americans who cannot join Medicare until age 65.

Lost Revenue to Medicare: The BCRA would repeal a payroll tax increase on the wealthiest Americans, which currently amounts to a 0.9% increase for individual workers with annual incomes of more than $200,000 and couples with more than $250,000. Among other provisions in the ACA, this modest increase helped put the Medicare program on stronger financial footing. The elimination of this tax increase is estimated to reduce federal revenues by $58.6 billion over the next ten years.[11] This reduction in funds would accelerate exhaustion of the Medicare Hospital Insurance (Part A) Trust Fund two years earlier than projected, from 2028 to 2026.[12] It alarms us that Congress would knowingly undercut the availability of these resources through the BCRA—merely to provide tax breaks to the wealthiest Americans.

Similarly, we are concerned by reports, based on estimates from the Centers for Medicare & Medicaid Services' independent actuary that the BCRA repeal of a tax on pharmaceutical manufacturers would increase Medicare Part B premiums by $8.7 billion in aggregate over the next decade.[13] This effectively amounts to a premium hike on older adults and people with disabilities to fund a tax break for pharmaceutical companies.

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[9] Tricia Neuman, Karen Pollitz, & Larry Levitt, "How the Senate Better Care Reconciliation Act (BCRA) Could Affect Coverage and Premiums for Older Adults," Kaiser Family Foundation (June 2017), *available at* http://www.kff.org/health-reform/issue-brief/how-the-senate-better-care-reconciliation-act-bcra-could-affect-coverage-and-premiums-for-older-adults/.

[10] *See* Tim Jost, "Examining The House Republican ACA Repeal And Replace Legislation," Health Affairs Blog (March 7, 2017), *available at* http://healthaffairs.org/blog/2017/03/07/examining-the-house-republican-aca-repeal-and-replace-legislation/.

[11] Congressional Budget Office, "H.R. 1628, Better Care Reconciliation Act of 2017" (June 26, 2017), *available at* https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/52849-hr1628senate.pdf.

[12] Paul N Van de Water, "House-Passed Health Plan Would Speed Medicare Trust Fund's Depletion by Two Years," Center on Budget and Policy Priorities (May 2017), *available at* http://www.cbpp.org/blog/house-passed-health-plan-would-speed-medicare-trust-funds-depletion-by-two-years.

[13] U.S. Senate Finance Committee Ranking Member and U.S. Energy & Commerce Committee Ranking Member, "Press Release: TrumpCare's Tax Gift to Pharma Raises Premiums By Billions in Medicare Part B," (March 2017), *available at* https://www.finance.senate.gov/ranking-membersnews/trumpcares-tax-gift-to-pharma-raises-premiums-by-billions-in-medicare-part-b.

Providing tax breaks for wealthy Americans and corporations that effectively serve to undercut the Medicare program's financing is deeply shortsighted. Over 10,000 people become eligible for Medicare each day, and by the year 2030, over 80 million older adults and people with disabilities will rely on Medicare.[14] It is critical that Congress commit to preserving the program's existing revenue sources.

Process, Development, and Ongoing Negotiations: In addition to the content of the bill, we are deeply disappointed with the secretive manner in which the BCRA has been deliberated, shared, and advanced. The rushed nature of this process is particularly disconcerting. Our experience in direct service bears out the importance of carefully and thoughtfully constructing health care systems, taking into account a variety of perspectives, so as not to cause undue harm. Historically, the Senate has developed health care proposals through transparent means, including public hearings, open comment periods on discussion drafts, multi-stakeholder meetings, and more. Proposals to fundamentally restructure the ACA and Medicaid—like those included in the BCRA—should be treated no differently.

Before any votes are cast, the American public deserves to understand how the BCRA measures up to current law with respect to coverage, quality, and costs as well as any effects on the Medicare program's future. The American families whose access to basic health care and coverage will be impacted by the BCRA have not been afforded this opportunity, and so we do not believe this legislation should proceed to a vote.

In sum, for reasons concerning both substance and process, we strongly oppose the BCRA. We urge you to work towards bipartisan consensus on needed reforms to enhance health care access and affordability for older adults, people with disabilities, and their families. If you have questions, please contact Stacy Sanders, Federal Policy Director, at ssanders@medicarerights.org or 202-637-0961. Thank you.

Sincerely,

Joe Baker
President
Medicare Rights Center

CC: The Honorable Orrin Hatch, Chairman, Committee on Finance
The Honorable Ron Wyden, Ranking Member, Committee on Finance
The Honorable Lamar Alexander, Chairman, Committee on Health, Education, Labor & Pensions
The Honorable Patty Murray, Ranking Member, Committee on Health, Education, Labor & Pensions
The Honorable Susan Collins, Chairman, Senate Special Committee on Aging
The Honorable Bob Casey, Ranking Member, Senate Special Committee on Aging

[14] Kaiser Family Foundation, "Medicare: An Overview," Slide 31, (2017), *available at* http://www.kff.org/slideshow/medicare-an-overview/.