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July 29, 2020

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

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

Dear Majority Leader McConnell and Minority Leader Schumer:

On behalf of the Medicare Rights Center (Medicare Rights), thank you for your ongoing efforts to respond to the coronavirus public health emergency. As this work continues, we respectfully urge you to prioritize older adults, people with disabilities, and their families in the next relief package.

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.

Many of those we serve are at high risk of severe illness and even death from COVID-19.¹ We recognize the pandemic and its effects will have a lasting impact on people with Medicare and the program, and that additional policy solutions will be necessary as the situation evolves. In this package, however, we encourage you to focus on reforms that are urgently needed to help people with Medicare maintain their health, safety, and independence during the crisis and beyond. To that end, below we recommend strategies to improve Medicare enrollment; support beneficiary health, safety, and financial security; and strengthen Medicaid and other community living programs.

MEDICARE ENROLLMENT

If people do not have health coverage or cannot afford to pay for care, they will avoid medical treatment—a dangerous outcome in general, and for at-risk populations in particular. To help people with disabilities and older adults obtain coverage as soon as possible during this crisis, we recommend simplifying Medicare enrollment and empowering beneficiaries to make timely, optimal decisions.

Ease and Expedite Enrollment. Medicare-eligible individuals who have experienced mismanaged Medicare transitions may find themselves without affordable coverage during this crisis. To help people connect with their Medicare at a time when they need it most, we strongly support the establishment of a dedicated Medicare Special Enrollment Period (SEP) for Premium Part A and Part B, with coverage beginning the first day of the next month.² We also urge you to direct the Centers for Medicare & Medicaid Services (CMS) to

¹ Centers for Disease Control, "People Who Are at Increased Risk for Serious Illness" (last updated June 25, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>.

² See H.R. 6800, Sec. 30207 <https://www.congress.gov/116/bills/hr6800/BILLS-116hr6800pcs.pdf>.

utilize its existing authority to re-establish an SEP for Part C and Part D.³ These SEPs should be put in place immediately and remain available for the duration of the emergency period, at a minimum.

Expand Enrollment Relief. During the pandemic, there are people who may be prevented from using a Medicare enrollment period to make an optimal or timely coverage choice, and who could face lengthy coverage gaps and lifelong financial penalties as a result. To help these individuals correct their enrollment mistakes as soon as they are discovered—which may be well after the end of any emergency-specific SEPs—we urge you to expand the basis for equitable relief to include good faith reasons such as such as coronavirus-related enrollment problems. Swift action is required to ensure people whose enrollment is derailed due to the pandemic are held harmless.

Empower Beneficiary Decision-Making. As part of any efforts to subsidize COBRA premiums or otherwise encourage enrollment in such plans, we urge Congress to empower consumer decision-making through outreach and education to people who lose employer-based health insurance during the pandemic.⁴ This is necessary to help Medicare-eligible people make optimal coverage choices and avoid costly Part B enrollment mistakes.

Remove Enrollment Barriers. To further facilitate access to care, we support waiving financial late enrollment penalties for those who use a coronavirus-specific enrollment pathway and eliminating administrative burdens that may delay coverage. This includes a permanent change to allow people to enroll in Part B without first submitting proof of coverage paperwork (Form CMS L564) in instances when they have limited or no access to their employers, Social Security field offices, or the required documentation.⁵

HEALTH, SAFETY, AND FINANCIAL SECURITY

Many Medicare beneficiaries live on fixed or limited incomes that cannot absorb economic downturns. Half of all Medicare beneficiaries—nearly 30 million people—live on \$26,200 or less per year, and one quarter have less than \$14,550 in savings.⁶ As a result, most people with Medicare cannot afford to pay more for health care or other necessities, like food and rent. During this uncertain time, older adults and people with disabilities need immediate and meaningful financial relief, as well as affordable, comprehensive coverage and care that promotes health, safety, and well-being. They must also be able to rely on critical programs and legal protections, now and in the future.

Ensure Affordable Care and Treatment. Concerns about cost should not deter anyone from seeking medical attention when a COVID-19 infection is suspected or confirmed. All Americans, including people with Medicare, must be able to pursue and obtain care in such instances without cost sharing.⁷

Provide and Target Financial Relief. Congress must safeguard the income and retirement security of older adults, people with disabilities, families, and the health care workforce. To that end, we support relief efforts that help those most in need—especially people with low incomes and those who have been hardest hit by the pandemic and recession—without impairing funding to Medicare and Social Security. This includes continuing expanded unemployment benefits and issuing a second round of automatic, direct

³ Centers for Medicare & Medicaid Services, Medicare Enrollment and Appeals Group, “Special Enrollment Period (SEP) for Individuals Affected by a FEMA-Declared Weather-Related Emergency or Other Major Disaster: Applicable for COVID-19” (May 5, 2020) <https://www.cms.gov/files/document/special-enrollment-period-sep-individuals-affected-fema-declared-weather-related-or-other-major.pdf>.

⁴ See H.R. 6800, Sec. 30312 <https://www.congress.gov/116/bills/hr6800/BILLS-116hr6800pcs.pdf>.

⁵ Centers for Medicare & Medicaid Services, “Request for Employment Information” <https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/Downloads/CMS-L564E.pdf>.

⁶ Gretchen Jacobson et al., Kaiser Family Foundation, “Income and Assets of Medicare Beneficiaries, 2016-2035” (April 21, 2017) <https://www.kff.org/medicare/issue-brief/income-and-assets-of-medicare-beneficiaries-2016-2035/>.

⁷ See H.R. 6800, Secs. 30104, 30105, 30201, 30204, 30205, 30303, 30401, 30402, 30403 <https://www.congress.gov/116/bills/hr6800/BILLS-116hr6800pcs.pdf>.

stimulus payments that reach Supplemental Security Income (SSI) and Veterans Affairs (VA) benefits recipients, people who use Individual Taxpayer Identification Numbers (ITIN), and dependents of all ages.

Strengthen Medicare and Social Security. In the coming months, Congress may need to address a pair of Social Security program complexities that could result in drastic benefit cuts for some workers and retirees. The first is that a limited or absent Social Security cost-of-living adjustment (COLA) in 2021 could keep Social Security benefit amounts level next year, while separately, Part B program costs—and premiums, which must cover 25% of those costs—continue to grow. Should this occur, the Social Security Act would hold most beneficiaries harmless by preventing their Part B premiums from increasing. However, it would do so by shifting those costs onto the 30% of beneficiaries who are not protected by the Act’s hold harmless provision.⁸ As in the past, legislation would be needed to address this imbalance. We urge you to monitor this issue, including the release of the COLA and Part B premium amounts this fall. If action is then needed, we recommend a swift, tailored response and suggest using the Bipartisan Budget Act of 2015 (P.L. 114-74) as a template. The second is a coronavirus-related glitch in the Social Security benefit formula that, if left uncorrected, could result in a sizable benefit cut in Social Security retirement income for individuals born in 1960 and 1961. We ask that you resolve this matter quickly and in a way that ensures no one receives lower benefits as a result. To further protect the programs and their earned benefits, the forthcoming COVID relief package must not be used as a vehicle to make recommendations about or changes to Medicare and Social Security, including as outlined in current and prior versions of the TRUST Act (S. 4323). Not only is such an effort wholly unrelated to the crisis, but it wrongly targets critical programs that are helping millions of Americans survive it.

Support Informed Telehealth Policymaking. We appreciate efforts to streamline, simplify, and enhance Medicare coverage of telehealth, including for behavioral health services, during the public health emergency. People with Medicare must be able to obtain care and treatment without putting their health, safety, and lives at risk. As Congress contemplates a post-pandemic Medicare telehealth landscape, we urge a cautious, thoughtful, and evidence-based approach that advances health equity and centers the unique and evolving needs of people with Medicare.⁹ To facilitate an informed policymaking process, we support establishing a glide path that prevents a beneficiary’s access to telehealth services from ending the moment the emergency period does, and contemporaneous heightened oversight, data collection, and public reporting.

Promote Nursing Home Safety and Resident Rights. Congress must improve nursing home, resident, and health care worker safety, including by ensuring adequate protective equipment and testing is available and correctly used, and by funding states to assist with clinical care, infection control and prevention, and staffing. We also support strengthening public reporting and oversight requirements; improving communication between staff and families as well as between residents and their loved ones; and the development of training materials and protocols for staff and visitors. Additionally, the rights of people with Medicare, their families, caregivers, and health care workers must not be diminished in any way or in any setting, including through the adoption of liability shields or enhanced immunity protections for nursing homes and other long-term care facilities.¹⁰

MEDICAID AND OTHER COMMUNITY LIVING SUPPORTS

People with Medicare look to a constellation of services—including Medicaid and annually-appropriated programs—to stay healthy, engaged, and at home. During this emergency, these goals are especially critical. Congress must provide states, localities, and programs with adequate resources to support older

⁸ Congressional Research Service, “Medicare Part B: Enrollment and Premiums” (May 6, 2020) <https://crsreports.congress.gov/product/pdf/R/R40082>.

⁹ Medicare Rights Center and the Center for Medicare Advocacy, “Medicare Expansion of Telehealth Helps Beneficiaries Access Care During the Pandemic—But Caution is Needed Before Making These Changes Permanent” (July 23, 2020) <https://www.medicarerights.org/pdf/072320-cma-joint-principles-telehealth.pdf>.

¹⁰ See S. 3644 <https://www.congress.gov/116/bills/s3644/BILLS-116s3644is.pdf> and H.R. 6800, Secs. 30202, 30209, 30210, 30211 <https://www.congress.gov/116/bills/hr6800/BILLS-116hr6800pcs.pdf>.

adults and people with disabilities in the community, ensuring they are not forced into institutional or other congregated settings in violation of their rights and at risk to their health.

Increase Medicaid Funding. We support expanding and extending federal Medicaid payments to states to help the program respond to current and growing needs during the pandemic and attendant economic downturn. Specifically, we urge you to adopt a global Federal Medical Assistance Percentage (FMAP) increase of at least 14%, including a 10% increase for Medicaid home and community-based services (HCBS), which are particularly vulnerable to state budget cuts. Current law maintenance of effort (MOE) protections should continue to apply.¹¹

Support Communities. We urge Congress to provide direct fiscal aid to states, cities, and towns, so they can continue to fund services that help older adults and people with disabilities live safely at home.

Prioritize Community Living Programs. During the coronavirus outbreak and beyond, initiatives that help people with Medicare maintain their health and independence for as long as possible must be a priority. Accordingly, we recommend adequate funding and necessary flexibilities for programs that promote community living. In addition to Medicaid and Medicare, this includes those authorized by the Older Americans Act, such as home delivered meals, elder abuse prevention, and caregiver supports; LIHEAP energy relief; housing supports and homelessness prevention; and SNAP and other food assistance.

Again, thank you for your leadership in this trying time. We look forward to working together to ensure all people with Medicare have meaningful access to affordable coverage and care, now and in the future.

Sincerely,



Fred Riccardi
President
Medicare Rights Center

¹¹ See H.R. 6800, Secs. 30101, 30103 <https://www.congress.gov/116/bills/hr6800/BILLS-116hr6800pcs.pdf>.