March 8, 2017

The Honorable Greg Walden
Chairman
Committee on Energy and Commerce
U.S. House of Representatives

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
U.S. House of Representatives

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives

The Honorable Richard Neal
Ranking Member
Committee on Ways and Means
U.S. House of Representatives

Dear Chairman Walden, Chairman Brady, Ranking Member Pallone, and Ranking Member Neal:

On behalf of the Medicare Rights Center (Medicare Rights), I am writing to submit a formal statement on the American Health Care Act (AHCA). We cannot support AHCA in its current form or the process leading to the bill's markup by the U.S. House Committees on Energy and Commerce and Ways and Means.

We have grave concerns that AHCA could damage the lives of millions of Americans, including older adults, people with disabilities, and their families. 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. Our organization provides services and resources to nearly three million people with Medicare, family caregivers, and health care professionals each year.

We are deeply disappointed with the secretive and rushed manner in which AHCA has been deliberated, shared, and advanced. Historically, both Committees have 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 Affordable Care Act (ACA) and Medicaid—like those included in AHCA—should be treated no differently.

The Committees should not vote on AHCA in the absence of an independent analysis by the Congressional Budget Office (CBO). A CBO score on ACA repeal legislation is needed to assess its impact on the availability and affordability of health coverage for American families and on federal spending. Before any votes are cast, the American public deserves to know how AHCA measures up to current law with respect to coverage and costs as well as any effects on Medicare financing.

Further, we are very concerned by provisions in AHCA that we expect would result in coverage losses and higher health costs among older adults, people with disabilities, and their families. Our particular concerns are as follows:

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 health insurance options. Most often, these calls came from Americans in their 50s and 60s 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 become reliant 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%.[1] Over 1.5 million people with disabilities are in the Medicare two-year waiting period at any time and frequently turn to the ACA for coverage before their Medicare takes effect.[2]

We are deeply concerned that the combined effect of AHCA'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 cause them to go without coverage altogether. AHCA would effectively end the Medicaid expansion—which now benefits 11 million Americans—by ratcheting back the federal government's matching rate for those who do not maintain continuous coverage and for future enrollees starting in 2020.

Further, with respect to the Marketplaces, AHCA 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, hiking the age rating limit to 5:1 would increase premiums for adults ages 60 and older by an average of $3,200 per year—a 22% increase.[3] AHCA also significantly 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.[4] 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 insufficient cost-sharing assistance available under AHCA, undoing essential coverage gains for older Americans not yet eligible for Medicare benefits.

Medicaid Per-Capita Caps: AHCA rewrites the Medicaid program by way of per-capita caps, with potentially destructive effects on access to health care for older adults and people with disabilities. According to one analysis, AHCA would shift $370 billion in Medicaid costs to states over the next ten years.[5]

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[1] 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.

[2] *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.

[3] Jane Sung and Olivia Dean, "Impact of Changing the Age Rating Limit for Health Insurance Premiums," (AARP Public Policy Institute: February 2017), available at: http://www.aarp.org/content/dam/aarp/ppi/2017-01/Final_Spotlight_Age_Rating_Feb7.pdf.

[4] 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/

[5] Center on Budget and Policy Priorities, "House GOP Medicaid Provisions Would Shift $370 Billion in Costs to States Over Decade" (March 7, 2017), available at http://www.cbpp.org/blog/house-gop-medicaid-provisions-would-shift-370-billion-in-costs-to-states-over-decade.

Ten million people with Medicare rely on Medicaid to cover vital long-term home health care and nursing home services, to help afford their Medicare costs, and more.[6] 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.

Federal Medicaid payments for the Medicare Savings Programs, which provide assistance with Medicare Part B premiums and cost-sharing for the lowest income people with Medicare, are exempt from the capped payments established through AHCA. 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 safety net by exercising existing flexibilities to expand eligibility for the Medicare Savings Programs. These questions about the overarching impact of AHCA inform our strong reservations with the bill and our insistence that the Committees secure a CBO analysis before voting on the legislation.

Continuous Coverage and Premium Penalties: For people in the individual and small group market, AHCA aims to establish a continuous coverage incentive through the application of premium penalties—amounting to a 30% increase for a full plan year for individuals who go without creditable coverage for more than 63 continuous days. In the past, some lawmakers have suggested that the use of premium penalties in the Medicare program serves as an effective model for continuous coverage provisions like those in AHCA.[7]

Yet, even for people with Medicare, the application of such penalties proves problematic. We continue to observe that far too many people newly eligible to Medicare Part B and Part D are wrongly assessed such penalties, largely because these individuals made honest mistakes and failed to understand complex enrollment rules—not because they sought to "game" the Medicare program and avoid paying for coverage.[8] Indeed, bipartisan legislation was introduced in the last Congress to attend to these very concerns in Medicare Part B.[9]

As written, AHCA makes no attempt to address these challenges, such as through exemptions in cases where hardship prevents maintenance of coverage. As a result, rather than a fair attempt to encourage people to retain continuous coverage, the bill's premium penalties are more likely to serve as an overly punitive measure, especially for those who lose employer-sponsored coverage and cannot afford alternatives (including COBRA or individual market plans) and for whom expansion Medicaid will no longer be available.

Repeal of the Medicare Tax Increase: AHCA 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 for the long term.

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[6] 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.

[7] *See* Pete Sessions, Bill Cassidy, and John Goodman, "How We Can Repeal The ACA And Still Insure The Uninsured" (January 18, 2017), available at http://healthaffairs.org/blog/2017/01/18/how-we-can-repeal-the-aca-and-still-insure-the-uninsured/.

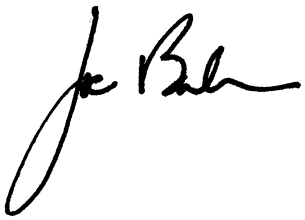
[8] *See* Stacy Sanders, "Medicare Part B Enrollment: Pitfalls, Problems, and Penalties," (Medicare Rights Center: November 2014), available at: https://www.medicarerights.org/pdf/PartB-Enrollment-Pitfalls-Problems-and-Penalites.pdf; Kathryn Paez and Beth Almeida, "Medicare Enrollment Maze Puts Older Americans at Risk for Financial Penalties and Coverage Gaps," (AIR Center on Aging, October 2016), available at: http://www.air.org/system/files/downloads/report/Medicare-Enrollment-Maze-Puts-Older-Americans-at-Risk-October-2016-rev.pdf; Medicare Rights Center, "Part D Enrollment: Penalty Pitfalls," (October 2016), available at: https://www.medicarerights.org/pdf/medicare-snapshot-october-2016.pdf

[9] *See* Beneficiary Enrollment and Notification Eligibility Simplification (BENES) Act of 2016 (H.R. 5772; S. 3236)

According to one estimate, rescinding this tax will accelerate insolvency of the Medicare Part A Trust Fund by four years, from 2028 to 2024.[10] As such, we are deeply concerned about the long-ranging impact of AHCA on the financial stability of the Medicare program. As discussed above, we believe it is unwise to advance this bill before its full import is assessed and communicated to the public at large.

For these reasons, we cannot support the American Health Care Act (AHCA), and we do not believe today's markup should proceed, particularly without a requisite CBO analysis and additional opportunity for public input and review. 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 Paul Ryan, Speaker, U.S. House of Representatives
The Honorable Nancy Pelosi, Minority Leader, U.S. House of Representatives
The Honorable Mitch McConnell, Majority Leader, U.S. Senate
The Honorable Charles Schumer, Minority Leader, U.S. Senate
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 Orrin Hatch, Chair, Committee on Finance
The Honorable Ron Wyden, Ranking Member, Committee on Finance
The Honorable Susan Collins, Chairman, U.S. Senate Special Committee on Aging
The Honorable Bob Casey, Ranking Member, U.S. Senate Special Committee on Aging

[10] Loren Adler & Paul B. Ginsburg, "Paying for an ACA replacement becomes near impossible if the law's tax increases are repealed" (December 19, 2016), available at https://www.brookings.edu/blog/up-front/2016/12/19/paying-for-an-aca-replacement-becomes-near-impossible-if-the-laws-tax-increases-are-repealed/.