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March 23, 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

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Majority Leader McConnell, Minority Leader Schumer, Speaker Pelosi, and Minority Leader McCarthy:

On behalf of the Medicare Rights Center (Medicare Rights), thank you for your bipartisan efforts to respond to the coronavirus public health emergency. As this work continues, we respectfully urge you to address the needs of older adults, people with disabilities, and their families in any forthcoming legislation.

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.

Those we serve are at high risk of infection, serious illness, and even death from the virus.[1] Immediate and long-term solutions are needed to ensure systems and policies are in place to anticipate and meet these needs. Below, we recommend strategies to improve Medicare enrollment, access and affordability, and prescription drug coverage; as well as to strengthen Medicaid and other programs that support community living.

MEDICARE ENROLLMENT

If people do not have health coverage or cannot afford to pay for care, they will avoid medical treatment—the worst possible outcome for at-risk populations. To ensure people with disabilities and older adults can obtain coverage as soon as possible, we urge Congress to streamline the Medicare enrollment process,

[1] Centers for Disease Control, "If You Are at Higher Risk" (last accessed March 16, 2020), https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html.

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eliminate unnecessary gaps in coverage, and empower beneficiaries to make timely, optimal decisions about their coverage.

Close Enrollment Coverage Gaps. The bipartisan Beneficiary Enrollment Notification and Eligibility Simplification (BENES) Act (S. 1280/H.R. 2477) would modernize the Medicare Initial Enrollment Period (IEP) and the General Enrollment Period (GEP) to allow coverage to begin more quickly—no later than the first day of the month following enrollment. This significant update would eliminate unnecessary, months-long breaks in coverage that today can leave people exposed to high costs and inadequate care. The bill would also address long-standing beneficiary outreach and education needs and align Medicare's enrollment periods, streamlining enrollment decisions and systems. Together, these changes would improve the health and financial well-being of current and future Medicare beneficiaries.

Eliminate the SSDI Waiting Period. We also recommend eliminating the 24-month Medicare waiting period for people who qualify for Social Security Disability Insurance.

Remove Enrollment Barriers. To facilitate enrollment, we strongly support extending the currently available Medicare enrollment periods and waiving financial late enrollment penalties program-wide. Further, we urge the immediate non-enforcement of burdensome administrative requirements that may delay enrollment and the provision of coverage. This includes allowing people to enroll in Part B without first submitting proof of coverage documentation (Form CMS L564).[2] Collecting and providing this information is uniquely difficult during the coronavirus pandemic, as access to employer records, workplaces, and Social Security field offices may be restricted. These critical flexibilities should remain in effect through December 31, 2020, at a minimum, and longer if the public health and national emergency declarations extend beyond that date.

Strengthen Medigap Access. Though Medigaps help a growing number of people[3] with Original Medicare afford needed care, not everyone is eligible to buy the plans, and most are only guaranteed the right to do so during very limited timeframes.[4] We support removing these barriers so that beneficiaries have greater access to affordable, high-quality Medigap policies as well as the opportunity to re-evaluate their coverage as their needs change. This includes extending guaranteed issue to all people with Medicare and facilitating transitions from Medicare Advantage.

Auto-Enroll Low-Income Beneficiaries. In addition, we support establishing an automatic enrollment process for people who are eligible for Medicare Savings Programs (MSPs). This would help ensure those who need testing and/or treatment for coronavirus can access and afford it.

Adequately Fund Enrollment Assistance. Further, we urge Congress to increase and make permanent the funding for low-income outreach and assistance efforts originally authorized under the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008. We also encourage enhanced appropriated funding for State Health Insurance Assistance Programs (SHIPs).

MEDICARE ACCESS AND AFFORDABILITY

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

[2] Centers for Medicare & Medicaid Services, "Request for Employment Information" https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/Downloads/CMS-L564E.pdf.
[3] MedPAC, "Trends in Medigap Enrollment, 2010 to 2015" (February 13, 2017), http://www.medpac.gov/-blog-/trends-in-medigap-enrollment-2010-to-2015/2017/02/13/trends-in-medigap-enrollment-2010-to-2015.
[4] Cristina Boccuti, et al., "Medigap Enrollment and Consumer Protections Vary Across States," Kaiser Family Foundation (July 11, 2018), https://www.kff.org/medicare/issue-brief/medigap-enrollment-and-consumer-protections-vary-across-states/.

have less than $14,550 in savings.[5] 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 will need immediate and lasting financial relief. Any financial stimulus efforts must consider those most in need.

Make Medicare More Affordable. As part of stimulus efforts and to address affordability challenges, we recommend waiving monthly Medicare Part B premiums and the Part A hospital deductible through at least December 31, 2020—longer if the national and public health emergencies remain in place beyond that date.

Provide a Cost-of-Living Increase. We also urge Congress to consider authorizing an ad hoc cost of living increase for Social Security payments.

Expand Access to Low-Income Assistance Programs. Medicare Savings Programs (MSPs) help beneficiaries with limited incomes and savings afford Medicare Part A and/or B. To improve access to this critical assistance, we support raising the programs' income limits and eliminating the asset tests.

Eliminate Medicare's Three-Day Stay Requirement. We support CMS's action to temporarily waive the three-day inpatient hospital stay requirement for some beneficiaries during the coronavirus pandemic. However, this waiver is limited by circumstance and in scope. We strongly urge Congress to enact a permanent and more comprehensive solution—the bipartisan Improving Access to Medicare Coverage Act (S. 753/H.R. 1682). This legislation would count the time a Medicare beneficiary spends under observation toward the three-day inpatient stay requirement for Medicare coverage of Skilled Nursing Facility (SNF) care. This would allow those who need SNF care to access it, even after the pandemic has eased.

Expand Access to Home Health Care. We also continue to urge Congress to eliminate the requirement that Medicare beneficiaries be "home bound" to qualify for home health coverage. Legislative language reinforcing implementation of the *Jimmo v. Sebelius* settlement (2013), which clarified that Medicare covers skilled home health care to maintain or prevent decline, is also critical.[6]

MEDICARE PRESCRIPTION DRUG COVERAGE

Underlying financial hardships, along with rising health care and prescription drug costs, antiquated coverage rules, and burdensome program requirements, can make it difficult for beneficiaries to obtain needed prescription drugs. Absent congressional intervention, the economic and health care pressures of the coronavirus crisis will only worsen these challenges. We urge you act without delay to ensure older adults and people with disabilities can consistently, safely, and quickly access the medications they need to stay healthy and independent.

Improve Medicare Part D Appeals. Meaningful access to needed medications cannot be achieved without first improving the deeply flawed Medicare Part D appeals process. The current system's complexity can significantly delay the receipt of necessary medications and irreparably derail treatment protocols. Current bipartisan legislation, the Streamlining Part D Appeals Process Act (S. 1861/H.R. 3924) offers a commonsense solution: allow a refusal at the pharmacy counter to serve as the plan's initial coverage determination. This one, simple change would give people with Medicare more timely information about their plan's coverage decision and eliminate unnecessary steps within the system—lessening burdens for all involved. We strongly support the bill's inclusion in any coronavirus relief package. We also urge Congress

[5] Gretchen Jacobson, et al., "Income and Assets of Medicare Beneficiaries, 2016-2035," Kaiser Family Foundation (April 21, 2017), https://www.kff.org/medicare/issue-brief/income-and-assets-of-medicare-beneficiaries-2016-2035/.
[6] Center for Medicare Advocacy, "Improvement Standard and Jimmo News" (2019), https://www.medicareadvocacy.org/medicare-info/improvement-standard/.

to work with the Administration to allow beneficiaries to request a tiering exception for specialty tier drugs, and to expedite all appeals for the duration of the pandemic.

Notify Beneficiaries About Refill, Pick-up, and Delivery Options. Medicare Part D plans should be required to send electronic and paper notices to enrollees alerting them to their options for prescription refills for more than 30 days at a time and mail-order options. Similarly, CMS and/or plans should notify beneficiaries about their rights to pick up medications and to have them safely delivered.

Ensure Access to Medications and Supplies. During this crisis, all payers, including Medicare, should cover 90-day medication and supply fills and allow partial fills. Payers should also cover refills authorized by telehealth visits and filled by mail order pharmacies, including those out of state. Finally, plans must be required—not just allowed—to ease "early refill" restrictions and waive prior authorization requirements for durable medical equipment and medications.

Restrict Denials. To further reduce barriers to care, we recommend temporarily suspending Part D denials due to prior authorization, step therapy, and restrictive formularies. Unless for safety, quantity limits should also be waived. Critically, these suspensions must apply to all prescriptions, not only those issued to treat, prevent, or manage coronavirus and related symptoms.

Improve Access to LIS/Extra Help. The Part D Low-Income Subsidy (LIS), or Extra Help, was designed to make it easier for low-income Medicare beneficiaries to afford their prescriptions—but overly-restrictive program rules are hindering access. To connect more low-income beneficiaries with this vital assistance, we recommend auto-enrolling all who are eligible, as well as eliminating the program's asset verification requirement and extending full Extra Help benefits to those living below 200% of the federal poverty level.

Make LI NET Permanent. Moreover, we urge Congress to make the Limited Income Newly Eligible Transition (LI NET) program permanent so it may continue to provide prescription drug coverage to low-income Medicare beneficiaries who are applying for but not yet enrolled in Part D. LI NET is an important safety net that that prevents beneficiaries who are eligible for LIS from experiencing a lapse in access to their prescription drugs.

Limit Beneficiary Out-of-Pocket Spending. We strongly support establishing a $2,000 annual cap to limit the amount people with Medicare pay for covered prescription drugs. Currently, beneficiaries not receiving low-income subsidies must pay 5% of their drug costs indefinitely once they reach the catastrophic coverage level—at which point they've already spent thousands of dollars out-of-pocket (OOP). In 2017, over 1 million non-LIS Part D enrollees had OOP spending above the catastrophic threshold, with average annual costs exceeding $3,200.[7] A hard cap would help reduce costs and enhance predictability for enrollees. With those goals in mind, we also support a mechanism that would allow total OOP costs to be distributed more evenly throughout the benefit year.

Enact Comprehensive Prescription Drug Reform. Due to their financial and health circumstances, many people with Medicare struggle to afford needed medications. The economic impacts of the coronavirus crisis are likely to make it even harder for beneficiary incomes to keep pace with high and rising high and

[7] Cubanski, Juliette et al., Kaiser Family Foundation, "How Many Medicare Part D Enrollees Had High Out-of-Pocket Drug Costs in 2017?" (June 21, 2019), https://www.kff.org/medicare/issue-brief/how-many-medicare-part-d-enrollees-had-high-out-of-pocket-drug-costs-in-2017/.

rising drug prices. At the same time, the virus is expected to create significant health challenges for older adults and people with disabilities, causing them to need new treatments when they can least afford it. Now more than ever, immediate action is needed to transform the nation's drug pricing system in ways that will lower prices, strengthen Medicare, and promote the well-being of those who rely on its coverage.

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 and programs with the resources they need to ensure that older adults and people with disabilities have the supports they need to remain in the community, and that they are not forced into institutional or other congregate settings, in violation of their rights and at risk to their health.

Increase Medicaid Funding for States. We appreciate H.R. 6201's 6.2% FMAP increase, but states will likely need much more funding to meet growing demands as the coronavirus spreads. We recommend increasing the enhanced match to 10% to allow states to fund needed services, including those that help older adults and people with disabilities live safely in their homes and communities**.** Similarly, we ask that you authorize an enhanced FMAP for states that fully expanded their Medicaid programs under the Affordable Care Act. This temporary boost would facilitate access to testing and treatment and help reduce uncompensated care costs for strained hospitals.

Strengthen Medicaid Home and Community Based Services (HCBS). We also urge Congress to permanently reauthorize the Medicaid Money Follows the Person (MFP) program. Doing so would enable states to help people transition home from congregate settings, which is an acute need during this crisis. Congress should also make permanent spousal impoverishment protections for married individuals receiving Medicaid-funded HCBS, so they can afford to stay together and at home when one spouse develops a chronic illness or disability.

Prioritize Programs that Support Community Living. During the coronavirus outbreak, helping people—especially those at high risk—live safely at home must be a priority. Accordingly, we urge adequate funding and necessary flexibilities for programs that help older adults and people with disabilities fully participate in their communities. 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; as well as LIHEAP energy relief; HUD-administered affordable housing; and SNAP and other food assistance. These initiatives help people with Medicare maintain their health and independence for as long as possible—allowing hospitals and facilities to focus their resources. We also urge passage of the Coronavirus Relief for Seniors and People with Disabilities Act (S. 3544), which would address the urgent health and economic needs of older adults, people with disabilities, front-line workers, and family caregivers.

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

Sincerely,

Fred Riccardi

Fred Riccardi
President
Medicare Rights Center