JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

May 23, 2017

The Honorable Orrin G. Hatch
Chairman, Committee on Finance
U.S. Senate
Washington, DC 20515

Dear Chairman Hatch:

Justice in Aging is writing to express our serious concerns about the American Health Care Act (AHCA). We strongly urge you not to move forward with this legislation or any other proposal that makes radical, harmful structural changes to the Medicaid program through per capita caps or block grants or otherwise threatens the health and financial stability of older Americans and their families.

Justice in Aging is an advocacy organization with the mission of improving the lives of low income older adults. Justice in Aging has decades of experience with Medicaid and Medicare, with a focus on the needs of low-income beneficiaries, including those dually eligible for both programs. We agree that stakeholder input is vital to the legislative process and appreciate your request for stakeholder expertise and recommendations. However, we strongly believe that the massive changes being contemplated in this legislation demand a full and transparent process and urge that your committee hold hearings on this bill.

We strongly oppose the Medicaid cuts and caps at the heart of the American Health Care Act. The bill fundamentally changes the promise and structure of Medicaid by capping federal funding for the program at levels that, by design, will leave states without enough funds to meet the health and long-term care needs of older adults over time. Over six million older adults rely on Medicaid,[1] and two-thirds of all Medicaid spending for older adults goes to essential long-term care services in nursing homes and at home and in the community.[2] Medicaid coverage is particularly important for older adults who need services not covered by Medicare, who cannot afford Medicare premiums and cost-sharing, who require mental health care or substance abuse treatment,[3] and who live in rural communities.[4] The AHCA threatens the care of all of these seniors and the peace of mind of their families.

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[1] *See* Molly O'Malley Watts, Elizabeth Cornachione, and MaryBeth Musumeci, "Medicaid Financial Eligibility for Seniors and People with Disabilities in 2015" (Kaiser Family Foundation, March 2016) available at http://kff.org/medicaid/report/medicaid-financial-eligibility-for-seniors-and-people-with-disabilities-in-2015/.

[2] Kaiser Family Foundation, "Medicaid's Role in Meeting Seniors' Long-Term Services and Supports Needs" (August 2016) available at http://files.kff.org/attachment/Fact-Sheet-Medicaids-Role-in-Meeting-Seniors-Long-Term-Services-and-Supports-Needs.

[3] *See* Han et al. Addiction, "Substance use disorder among older adults in the United States in 2020" (2009) available at: https://www.ncbi.nlm.nih.gov/pubmed/19133892.

[4] *See* Rural Health Information Hub, "Medicaid and Rural Health" available at https://www.ruralhealthinfo.org/topics/medicaid. *See also* Vann Newkirk & Anthony Damico, "The Affordable Care Act and Insurance Coverage in Rural Areas," (Kaiser Family Foundation, May 2014) available at http://kff.org/uninsured/issue-brief/the-affordable-care-act-and-insurance-coverage-in-rural-areas/.

WASHINGTON
1444 Eye Street, NW, Suite 1100
Washington, DC 20005
202-289-6976

LOS ANGELES
3660 Wilshire Boulevard, Suite 718
Los Angeles, CA 90010
213-639-0930

OAKLAND
1330 Broadway, Suite 525
Oakland, CA 94612
510-663-1055

The per capita cap proposed in the American Health Care Act will cut overall Medicaid program federal spending in states by 25 percent. The Congressional Budget Office estimated that the Medicaid program would lose over $800 billion in the next ten years, causing 14 million consumers to lose coverage.[5] Unlike the current Medicaid structure, states whose residents require more care (reflecting changes in a state's demographics, economy, medical needs, or the introduction of new, lifesaving breakthrough therapies, for example) would no longer receive matching federal funds above the per capita cap level.

Medicaid is a lifeline for older adults who need long-term services and supports (LTSS). Medicaid pays for approximately 62 percent of all publicly-funded LTSS,[6] including services in a person's home, in assisted living, adult foster homes, and nursing facilities. With the costs of nursing home care averaging over $82,000 annually,[7] few persons can afford this level of expense on an ongoing basis. As a result, six out of ten nursing home residents are Medicaid-eligible.[8] For those older adults who want to and are able to live at home instead of in an institution, through a home and community-based services (HCBS) waiver, a state can provide a package of services that enable Medicaid beneficiaries to receive necessary services at home. These waivers are widespread: over 1.5 million Medicaid enrollees in 47 states and the District of Columbia were served through HCBS waivers in 2013.[9] HCBS waivers are a win-win arrangement: the Medicaid program pays less than it would have paid for nursing home care, and the older person receives necessary services at home. However, the older adults who rely on these services may no longer be able to receive them if Medicaid funding is capped.

Capping Medicaid funding for the 11 million older adults and people with disabilities who are dually eligible for Medicaid and Medicare would be particularly devastating for people who need the most care. Doing so would create new incentives for states and providers to shift costs to Medicare and would disincentivize state investments that save Medicare money by preventing avoidable hospitalizations, nursing home stays, and more.

Per capita caps would particularly strain state budgets in light of the aging baby boomer demographic. As more adults age into their 80s and beyond, their health care costs increase. The Census predicts the number of people 85 and older will double by 2036,[10] and we know that the 85 and over age group incurs 2.5 times more Medicaid costs than adults ages 65 to 74.[11] While the House bill adds one percentage point to the per-capita cap's inflation rate for the elderly and disabled, there is no assurance that this increase will be sufficient as the baseline is still calculated using all adults age 65 and older, a

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[5] Congressional Budget Office, "Congressional Budget Office Cost Estimate, American Health Care Act" (March 2017), available at https://www.cbo.gov/publication/52486.

[6] *See* O'Shaughnessy, Carol V., "National Spending for Long-Term Services and Supports (LTSS), 2012," (National Health Policy Forum, March 27, 2014), available at http://nhpf.org/library/details.cfm/2783.

[7] Genworth Cost of Care Survey 2016, *available at* genworth.com/about-us/industry-expertise/cost-of-care.html

[8] *See* Charlene Harrington & Helen Carrillo, Nursing Facilities, Staffing, Residents and Facility Deficiencies, 2009 Through 2014, at 1, 8, (Kaiser Family Foundation, 2016) *available at* http://kff.org/medicaid/report/nursing-facilities-staffing-residents-and-facility-deficiencies-2009-through-2014/.

[9] *See* Terence Ng & Charlene Harrington, Medicaid Home and Community-Based Services Program: 2013 Data Update, at 1 (Kaiser Family Foundation 2016), *available at* http://kff.org/medicaid/report/medicaid-home-and-community-based-services-programs-2013-data-update/.

[10] Jennifer M. Ortman, Victoria A. Velkoff, and Howard Hogan, An Aging Nation: The Older Population in the United States, Population Estimates and Projections, at 9 (U.S. Census Bureau, May 2014), *available at* https://www.census.gov/prod/2014pubs/p25-1140.pdf.

[11] *See* Edwin Park, "Medicaid Per Capita Cap Would Shift Costs and Risks to States and Harm Millions of Beneficiaries" (Center on Budget and Policy Priorities, February 27, 2017), *available at* http://www.cbpp.org/research/health/medicaid-per-capita-cap-would-shift-costs-and-risks-to-states-and-harm-millions-of.

group which currently skews younger and therefore incurs less costly care. Funding caps, regardless of formula, will almost unavoidably lead states to scale back benefits, tighten eligibility, impose waiting lists, implement unaffordable financial obligations, or otherwise restrict access to needed care for older adults. Additionally, a decrease in available funds means that states would not be able to provide the upfront investments and incentives needed to help providers transform their practices to provide more integrated services, better care coordination, or increase capacity to provide care at home and in communities. In short, the caps would prevent states from taking the actions needed to improve care and lower long-term costs for their older residents.

In addition to our concerns about per capita caps for the older adults who are included in Medicaid's elderly category, **we are also concerned that by freezing Medicaid expansion, this bill will take away care for low-income older adults under age 65**. We know that millions of older adults rely on Medicaid to see their doctors and meet their medical needs before they qualify for Medicare, thanks to the expansion, and millions more have benefitted from other coverage under the Affordable Care Act.[12] Coverage and care for all of these adults is threatened by this bill.

Eliminating consumer protections will cause older adults buying health insurance in the individual market to face prohibitively high costs. With the MacArthur Amendment, the House bill is even more dangerous to seniors because it allows states to waive three of the ACA's critical consumer protections: the age-ratio limit, community rating, and the essential health benefits package. By allowing insurers to charge older adults five times more and allowing states to waive even this already dangerously high age-ratio limit, the AHCA effectively imposes an **"Age Tax"** on older Americans. We know that without these vital protections, the individual market will return to the pre-ACA days when older adults, 84 percent of whom have pre-existing conditions,[13] could not afford health coverage.

The AHCA would undermine the Medicare program's finances and threaten access to needed services for people with Medicare. Although Medicare is not the focus of the AHCA, the AHCA would still undermine the Medicare program. By repealing the ACA payroll tax increase on the wealthiest Americans, which currently amounts to a 0.9% increase for individual workers with incomes of more than $200,000 and for couples earning more than $250,000, would reduce Medicare Hospital Insurance (Part A) Trust Fund revenues by $117 billion between 2017 and 2026.[14] Combined with increased Medicare payments made to hospitals on behalf of the newly uninsured, this reduction in funds would lead to the Trust Fund's insolvency up to four years earlier than projected, from 2028 to 2024.[15] Millionaires would benefit substantially from these regressive tax cuts. In the same year of the Trust

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[12] *See* Linda J. Blumberg, Matthew Buettgens, and John Holahan, "Implications of Partial Repeal of the ACA through Reconciliation," (Urban Institute Dec. 2016) *available at* http://www.urban.org/sites/default/files/publication/86236/2001013-the-implications-of-partial-repeal-of-the-aca-through-reconciliation_1.pdf.

[13] *See* HHS ASPE, "Health Insurance Coverage for Americans with pre Existing Conditions: The Impact of the Affordable Care Act" (January 5, 2017) *available at* https://aspe.hhs.gov/system/files/pdf/255396/Pre-ExistingConditions.pdf.

[14] Joint Committee on Taxation, "Estimated Revenue Effects Of Budget Reconciliation Legislative Recommendations Relating To Repeal And Replace Of Certain Health-Related Tax Policy Provisions Contained In The "Affordable Care Act ('ACA')," (March 2017), *available at* https://www.jct.gov/publications.html?func=startdown&id=4988b.

[15] Letter to Senator Wyden from Acting CMS Administrator Slavitt (January 2017), *available at* https://www.finance.senate.gov/imo/media/doc/CMS%20Medicare%20solvency%20letter%20Final%20Signed.pdf; P. Van De Water, "House GOP Health Plan Would Accelerate Depletion of Medicare Trust Fund by Four Years," (Center on Budget and Policy Priorities: March 2017), *available at* http://www.cbpp.org/blog/house-gop-health-plan-would-accelerate-depletion-of-medicare-trust-fund-by-four-years.

Fund's anticipated insolvency, 64% of this tax windfall would go to workers earning more than $1 million, amounting to an average of $137,000 each.[16]

As you know, insolvency is not an indicator of the Medicare program's bankruptcy or demise. Should Trust Fund depletion proceed, the Medicare program could still cover 87% of the cost of inpatient care.[17] However, Congress has always acted to ensure adequate funding is available to prevent the Trust Fund from becoming insolvent,[18] and we are alarmed that the House voted to knowingly undercut the availability of these resources to provide tax breaks to the wealthiest Americans.

For these reasons, as well as the other significant changes that harm older adults, we cannot support the American Health Care Act. We strongly urge you to reject this bill and any legislation that includes per capita caps and other structural changes and cuts to Medicaid. If you have questions, please contact Jennifer Goldberg, Directing Attorney, at jgoldberg@justiceinaging.org. Thank you.

Sincerely,

Kevin Prindiville
Executive Director
Justice in Aging

[16] P. Van De Water, "House GOP Health Plan Would Accelerate Depletion of Medicare Trust Fund by Four Years," (Center on Budget and Policy Priorities: March 2017), *available at* http://www.cbpp.org/blog/house-gop-health-plan-would-accelerate-depletion-of-medicare-trust-fund-by-fouryears.
[17] P. Van De Water, "To Repeat: Medicare Isn't Going 'Bankrupt'" (Center on Budget and Policy Priorities: December 2016), *available at* http://www.cbpp.org/blog/to-repeat-medicare-isnt-going-bankrupt.
[18] The Boards of Trustees, "2016 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplemental Medical Insurance Trust Funds," (2017; pg. 26), available at: https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-andReports/ReportsTrustFunds/Downloads/TR2016.pdf.