

March 20, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230, The Capitol
Washington, DC 20510

The Honorable Chuck Schumer
Minority Leader
United States Senate
S-221, The Capitol
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Steny Hoyer
Majority Leader
United States House of Representatives
H-107, The Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
House Minority Leader
United States House of Representatives
H-204, The Capitol
Washington, DC 20515

RE: Legislative Proposals to Address COVID-19 Impact on Long-term Services and Supports

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

The National MLTSS Health Plan Association and America's Health Insurance Plans (AHIP) commend you for your rapid bipartisan, bicameral efforts to address the outbreak of COVID-19 in the United States. As health plans that serve the most vulnerable Americans, we urge you to include a range of policies to support older adults and people with disabilities in any future legislative vehicles designed to respond to the growing pandemic. The recommendations below represent a comprehensive set of policies aimed at addressing the needs of the long-term services and supports (LTSS) community during this national emergency. The purpose of these proposals is to 1) support individuals with functional limitations to remain safe and healthy, 2) promote the safety of the LTSS workforce and equip it to meet growing pressures, and 3) provide states and Medicaid managed care organizations (MCOs) with the flexibility to meet the demands of this emergency.

Established in 2016, the National MLTSS Health Plan Association is an association of health plans that contract with states to provide managed long-term services and supports.¹ Our members currently cover the large majority of all enrollees in MLTSS plans and assist states in delivering high-quality LTSS at the same or lower cost as the fee-for-service system with a focus on ensuring beneficiaries' quality of life and ability to live in the community instead of an institution.

AHIP is the national association whose members provide coverage for health care and related services to hundreds of millions of Americans every day. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities, and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access, and well-being for consumers.

We urge you to include the following provisions in any future legislation related to the global pandemic in order to support those with LTSS needs:

- Establish an emergency unpaid caregiver fund to help compensate caregivers who do not have access to paid leave and/or who are providing care to individuals with persistent functional limitations;
- Remove the voice and broadband limits under the Federal Communications Commission's Lifeline program and increase the income limit so more individuals have access to the program and its expanded services as a means to receive the recently expanded telehealth benefits;
- Designate personal care attendants (PCAs), Direct Support Professionals (DSPs), and other homecare workers that assist individuals with activities of daily living (ADLs) as "health care providers" for the purposes of receiving emergency support services and/or equipment;
- Allow a temporary waiver of PCA state credentialing and training requirements;
- Expand guaranteed sick leave to all PCAs and remove restrictions on overtime pay for PCAs during staffing shortages due to COVID19;
- Ensure fair and actuarially sound managed care payments and provide temporary rate relief for Medicaid MCOs whose capitation rates were based on assumptions of transitioning beneficiaries from institutions to the community, but whose operations were disrupted;
- Provide additional funding to the Administration for Community Living (ACL) to establish and expand expedited assistance for supports and services provided by the Aging and Disability Network;
- Delay the implementation of electronic visit verification (EVV) requirements for all states; and
- Uniformly waive several program requirements for all Medicaid programs without the need for a state to apply for an 1135 waiver, submit a state plan amendment, or other administrative waiver.

¹ Member organizations can be found at: [MLTSS Association](#) and [AHIP](#)

In the attached addendum we offer additional detail on each of these proposals for your consideration.

Thank you for your extraordinary leadership and continued commitment to addressing the crisis that COVID-19 presents to all Americans. We remain extremely concerned about the potential impact of this national emergency on those who are most vulnerable and stand prepared to work with you and your staff to ensure the individuals we serve receive the best support possible. Please do not hesitate to contact us at any time with questions or for further information at mkaschak@mltss.org or egoodman@ahip.org.

Sincerely,



Mary Kaschak
Executive Director
National MLTSS Health Plan Association



Elizabeth "Liz" Cahn Goodman
Executive Vice President
Government Affairs and Innovation
America's Health Insurance Plans

ADDENDUM

Congressional Action to Date

We applaud Congress for its swift action thus far to address the outbreak of COVID19 and its impact across all facets of society. The Coronavirus Preparedness and Response Supplemental Appropriations Act (H.R. 6074) and The Families First Coronavirus Response Act (H.R. 6201) contain several essential provisions to support those with LTSS needs, such as:

- A 6.2-percentage point increase in state Medicaid federal medical assistance percentages (FMAP) for the national emergency duration;
- Requirements for certain employers to offer paid sick time to employees directly affected by COVID19 or for those who need to provide care for another individual affected by COVID19;
- Appropriating \$1 billion to allow the National Disaster Medical System to reimburse costs associated with testing uninsured individuals; and
- Requirements for payers to waive cost-sharing associated with testing for COVID19.

Administration Action to Date

The Administration has also acted swiftly to provide the health care industry with guidance and flexibility to address the spread of the virus. Notably, the President's declaration of a National State of Emergency pursuant to the Stafford Act has allowed the Secretary of the Department of Health and Human Services (HHS) to invoke 1135 waiver authority. This authority provides the Secretary with broad latitude to waive requirements under Medicare, Medicaid, and CHIP, which is important to allow the necessary flexibility to implement policies to support those with LTSS needs. Under this authority, the Center for Medicare and Medicaid Services (CMS) recently [announced](#) that it would expand telehealth services beyond the previously acceptable geographic regions and would not audit providers to determine whether they have a "prior relationship" with a beneficiary. In addition, the State of Florida became the first state to [submit and receive approval for an 1135 waiver](#) for its Medicaid program. The waiver authority allows the state to:

- Waive prior authorization requirements to remove barriers to needed services;
- Streamline provider enrollment processes to ensure access to care for beneficiaries;
- Allow care to be provided in alternative settings in the event a facility is evacuated to an unlicensed facility;
- Suspend certain nursing home screening requirements to provide necessary administrative relief; and,
- Extend deadlines for appeals and state fair hearing requests.

Separately, the Administration released [further guidance](#) on the evening of March 18, 2020 to state Medicaid and CHIP programs on flexibilities already available to them. This guidance has been extremely useful for all Medicaid stakeholders but, as we discuss below, we urge Congress to authorize states to go beyond these existing flexibilities without the need for a state to submit an additional waivers or state plan amendments (SPA).

Proposals to Address COVID19 Impact on LTSS

Based on feedback we have received from our member plans along with a diverse set of LTSS stakeholders representing consumers, providers, aging and disability advocates, we strongly urge Congress to include the following proposals within its next legislative package.

1. Emergency Unpaid Caregiver Fund

We ask that Congress appropriate funds for unpaid caregivers who may experience increased burden and strain during the COVID19 outbreak. This emergency fund would be used to reimburse unpaid caregivers who look after family members with functional limitations but are not eligible for other forms of assistance such as paid leave. We recommend this fund work through the existing self-directed care model and further lift restrictions that prevent various family members from qualifying for reimbursement. Congress should also review the current regulatory and statutory authority governing the payment of otherwise unpaid voluntary caregivers under the HCBS and LTSS programs. These actions would recognize the disproportionate burden already put on unpaid caregivers and the burden that will likely increase during this national emergency.

2. Expansion of Lifeline Program

The Lifeline program is managed by the Federal Communications Commission and administered by the Universal Service Administrative Company (USAC). The program provides low-income beneficiaries (up to 135% of federal poverty guidelines) access to reduced cost phone or internet connections. **We recommend that Congress lift all restrictions on minute/data usage or significantly increase the amount of minutes/data available to beneficiaries along with increasing the income limit so that more individuals can qualify for the program.** This will give Medicaid beneficiaries access to the newly available telehealth services and ensure they have continued access to their local communities and relevant information on COVID19 through this expansion.

3. Designation of PCAs as “Health Care Providers” to Receive Emergency Supports and Equipment

Congress should classify personal care attendants, direct support professionals, and all other workers who provide assistance with ADLs as “health care providers” so that these individuals can receive the emergency supports and equipment afforded to all other health care workers. Given their key role and daily interactions with beneficiaries, PCAs serve as intimate and key providers of care for individuals with functional limitations. However, they are generally not recognized as “medical” staff because they do not provide skilled medical care. This distinction does not recognize the key role non-medical services and supports play in the life of a beneficiary with functional limitations.

4. Temporary Waiver of State Credentialing/Training Requirements for PCAs

Given the anticipated staffing shortages in the direct care workforce, Congress should temporarily allow a temporary lapse in training requirements and permit state reciprocity for any credentialing and licensures. The current workforce must become more mobile and deploy more easily to regions where there is greater demand for services, likely to be caused by COVID19.

5. *Temporary Waiver of Overtime Pay for PCAs and Guaranteed Paid Sick Leave*

We are concerned that the current restrictions on overtime pay for homecare workers (specifically referred to as “direct care workers” in this instance) may disadvantage those workers who could be asked to provide extra support in cases of staffing shortages caused by COVID19. **Therefore, we ask that Congress temporarily lift overtime pay restrictions for the direct care workforce during the emergency response.** The direct care workforce is already strained based on current demand for long-term care and could be put under more pressure in the coming months. Currently, direct care workers are subject to a unique interpretation of the Fair Labor Standards Act (FLSA) by the Department of Labor (DoL) regarding minimum wage and overtime pay. States may also have their own laws and generally employers must apply the law which most benefits the employee. However, there is significant variation in the application of these laws and any number of exceptions.

Separately, we ask that Congress guarantee that all PCAs are eligible for paid sick leave, regardless of the size of their employer. The Families First Coronavirus Response Act limits the paid sick leave requirement to employers with fewer than 500 employees with the ability for the Secretary of Labor to exempt small businesses with fewer than 50 employees. Many large health care systems exceed this 500-employee threshold while a large number of PCAs work for small businesses. PCAs are too crucial to the overall health care delivery system for these exemptions to apply. They should not be made to choose between addressing the impact of COVID-19 in their personal lives and maintaining a steady income.

6. *Ensuring Actuarially Sound Managed Care Payments*

We ask Congress to require strong CMS oversight of Medicaid managed care rate-setting and payments to ensure that all plans receive rates from states that are actuarially sound during and after the COVID-19 emergency; and prevent the waiver of section 438.4(a) of Medicaid managed care rules and the underlying statute relating to actuarial soundness, including under 1115 Waivers, Healthy Adult Opportunity Waivers, or 1135 waivers related to disaster relief.

Many MLTSS program capitated payment rates are based on assumptions of MCOs transitioning beneficiaries out of institutional long-term care settings to the community. We are confident in the ability of MCOs to meet these expectations under normal circumstances, but the COVID19 pandemic requires MCOs to slow down and delay their care transition activities to keep members safe and healthy.

7. *Additional Funding for ACL*

We ask that Congress appropriate additional funds for ACL to distribute to the Aging and Disability Network to help bolster its response and support for older individuals and those with disabilities impacted by COVID19. ACL and its network of state agencies on aging and disabilities, Area Agencies on Aging, Centers for Independent Living, and Aging and Disability Resource Centers provide support for older adults and people with disabilities in their homes and communities, and will be key players in distributing timely information and providing services and supports.

8. Delay the Implementation of EVV Requirements

We ask that Congress delay the timeline for states to implement EVV requirements so that states and LTSS stakeholders can focus on addressing COVID-19. Section 12006(a) of the 21st Century Cures Act mandates that states implement EVV for all Medicaid personal care services (PCS) that require an in-home visit by January 1, 2020. The purpose of EVV is to ensure accurate reporting, billing, and receipt of visits from home care providers. There currently exists a “good-faith” extension for states but it is narrowly constructed, and a general extension of the implementation timeline would alleviate this administrative burden for all states. We believe EVV is an essential step forward for the Medicaid program, but it currently represents an unnecessary administrative burden on states and LTSS providers.

9. Uniform Waiver of Certain Medicaid Program Requirements

We applaud states and CMS for taking immediate action through the 1135 waiver process, Appendix K for home- and community-based service (HCBS) waivers, state plan amendments (SPAs), and other administrative flexibilities to tailor their response to COVID19. As outlined above, CMS has clarified flexibilities that are already available to state Medicaid programs. Yet, in its clarification to state Medicaid programs, CMS frequently notes that states would need to submit one of the above waivers to go beyond what is already available to them. We are concerned that there remains uncertainty around what is already available to states and, for those flexibilities not available, that the current 1135/Appendix K/SPA submission process creates an unnecessary lag in the response time for states and MCOs. Often, the flexibilities requested have already been adopted across other payers, such as Medicare and the commercial market. **Therefore, we ask that Congress temporarily extend and implement several flexibilities to all Medicaid programs without the need for states to receive approval under one of the administrative waivers. Instead the state would only need to notify CMS of which authorities it plans to use in a timely fashion using a standardized form.** These include

- Allowing beneficiaries to receive 90-day supplies of medications at retail and mail-order pharmacies for medications which a 90-day supply is clinically appropriate;
 - *Purpose:* Medicare and Commercial markets have adopted this intervention to reduce beneficiary exposure to other individuals along with providing a stable source of medication in case the beneficiary may not be able to obtain them otherwise.
- Allowing for early refills of medications substances;
 - *Purpose:* Medicare and Commercial markets have adopted this change to reduce beneficiary exposure to other individuals.
- Allowing for home delivery of medications without the need to obtain a signature;
 - *Purpose:* This would reduce exposure and contact between the beneficiary and other individuals.
- Waiving certain hiring requirements for individuals who wish to hire a direct care worker for their ADL needs;
 - *Purpose:* Beneficiaries would be able to more quickly hire a direct care worker, including family members, to provide support with any functional limitations.

- Delaying and/or suspending current appeals and grievances timelines for services and/or items impacted by COVID19;
 - *Purpose:* States and plans would have more bandwidth to focus on providing care to beneficiaries rather than meeting administrative requirements.
- Delaying surveyor audit visits for institutional care facilities;
 - *Purpose:* States and providers would have more bandwidth to focus on providing care to beneficiaries rather than meeting administrative requirements.
- Delaying annual reviews of licensure and certification requirements for providers;
 - *Purpose:* Providers would be able to focus on providing care to beneficiaries rather than meeting administrative requirements.
- Adopting flexibilities offered to the Medicare program for telehealth services for all Medicaid programs;
 - *Purpose:* The Medicaid program would have access to all current Medicare flexibilities so that providers can consistently take advantage of flexibilities already approved by CMS. There currently exists several flexibilities for the Medicaid program to provide telehealth, but some state programs are still subject to requirements around what kinds of geographies (“originating sites”) are eligible for telehealth services.
- Allowing care to be provided in an alternative setting if a beneficiary must relocate due to COVID19.