



April 30th, 2024

Statement for the Record re: Legislative Proposals to Increase Medicaid Access and Improve Program Integrity

Dear Chair McMorris Rodgers, Ranking Member Pallone, Chair Guthrie, Ranking Member Eshoo, and Members of the Subcommittee on Health,

LeadingAge represents more than 5,400 nonprofit and mission-driven aging services providers and other organizations that touch millions of lives every day. Alongside our members and 36 partners in 41 states, we use advocacy, education, applied research, and community-building to make America a better place to grow old. Our membership encompasses the entire continuum of aging services, including skilled nursing, assisted living, memory care, affordable housing, retirement communities, adult day programs, community-based services, hospice, and homebased care. We bring together the most inventive minds in the field to lead and innovate solutions that support older adults wherever they call home.

Thank you for holding the hearing “Legislative Proposals to Increase Medicaid Access and Improve Program Integrity” on April 30, 2024. We have members that deliver services under the Medicaid program, both in nursing homes and through home and community-based services so we truly appreciate the opportunity to submit a statement for the record on behalf of our continuum of members. Much of the legislation under consideration is bipartisan in nature and we are pleased to see the Committee taking up a slew of commonsense proposals that will improve the care delivered and received by Medicaid beneficiaries as well as strengthening the program overall.

H.R. 8114: To prohibit the Secretary of Health and Human Services from finalizing a rule proposed by the Centers for Medicare and Medicaid Services to place certain limitations on Medicaid payments for home and community-based services.

LeadingAge supports this bill which would prohibit implementation of the home and community-based services (HCBS) payment adequacy provision of the Ensuring Access to Medicaid Final Rule (CMS-2442-F) (Access Rule). LeadingAge is broadly supportive of the Access Rule – many of the provisions of this final rule will indeed ensure greater access to Medicaid and strengthen the Medicaid program.

Unfortunately, the payment adequacy provision which mandates that 80% of Medicaid payments for home health, homemaker, and personal care services be spent on compensation for direct care workers.

We strongly support the need for more compensation for direct care workers. However, this provision will reduce, not increase, access. Individuals who rely on HCBS to live their lives in home-based settings will lose services, particularly if providers cannot meet these new requirements or are forced to restrict innovative, value-added care supports. CMS developed the threshold without data to inform it and without existing infrastructure to support the collection and reporting of accurate information, financing to support added resource needs, or data to ensure that the dollars are being distributed as intended. While CMS is implementing reporting requirements with the rule, they go into effect just before the required go live date for the adequacy provision – meaning that the data collected will have no bearing on what the threshold should look like. There is also no stated plan for supporting states in this data collection or ensuring that data collected on costs are consistent across states and lines of service. And while CMS made improvements in what should included in the definition of “compensation,” it still excludes costs



that are critical to providing safe and effective care, like technology, which puts providers in a bind if they want to remain in business. Finally, additional Medicaid dollars are needed to bolster access to services *now* – as outlined in the Better Care Better Jobs Act (HR. 547) and as called for in the President’s budget. Contemplating any kind of threshold without infrastructure, data, and funding does not make sense and we support HR 8114 which would prohibit this provision from being implemented.

H.R. 8106: To amend title XIX of the Social Security Act to remove the requirement that an individual need an institutional level of care in order to qualify for home and community-based services under a Medicaid waiver.

The 1915(c) requirement that individuals meet the institutional level of care (LOC) in order to qualify for HCBS is an outdated policy that is in dire need of reforms. 1115 waivers around the country have shown the value of providing limited, *preventative*, in-home care that prevents the deterioration of conditions and promotes longer community placements. We believe that allowing community based care, like adult day, to work with beneficiaries in a preventive manner would also show positive results regarding quality and ability to stay in the community. LeadingAge strongly supports this legislation. We believe it will offer opportunities for our members and others to innovate in service provision to populations that do not qualify for care under the current guidelines.

We support the other aspects of this legislation as well which would codify increased data reporting and transparency elements regarding waiver waiting lists and access to HCBS services. We also support the provision that would instruct CMS to issue guidance that would clarify for states how to offer services for participants with an interim plan of care. Current delays in care planning delay the onset of services and having more clarification on the option to establish an interim plan so that beneficiaries begin to receive services will improve access to care.

H.R. 8109: To amend the Deficit Reduction Act of 2005 to make permanent the Money Follows the Person rebalancing demonstration.

Money Follows the Person (MFP) is an important program that provides states with resources and flexibilities to successfully transition Medicaid beneficiaries who prefer to live in the community from residential settings. Evaluations have repeatedly shown that MFP supports transitions for individuals who would otherwise not leave the facility-based setting, thus resulting in improved quality of life for the participants. The MFP program is a consummate “extender” program – at the mercy of short extensions often announced at the last minute – which creates uncertainty about the ongoing viability of the program and creating administrative burdens and personnel challenges for states that must plan for the end of the grant in absence of guaranteed extension. LeadingAge supports the legislation to make this important program permanent and provides much needed stability in funding that will allow it to be even more effective.

H.R. 8110: To amend title XIX of the Social Security Act to make permanent the State option to extend protection against spousal impoverishment for recipients of home and community-based services under Medicaid.

Prior to the enactment of the Affordable Care Act, protections against impoverishment of a long-term care recipient’s spouse were mandatory for institutional services but optional for HCBS. Similar to the MFP program, Congress sees the value of this program, but it often is only extended for short periods as an



expiration date is fast approaching. These protections are vital for any person receiving long term services and supports from the Medicaid program, regardless of setting. LeadingAge supports this legislation which would make HCBS spousal protections permanent.

HR 8084., HR 8089, HR 8111, HR 8112: LeadingAge supports these bills which are aimed at improving the integrity of the Medicaid program.

H.R. 7513: The Protecting America’s Seniors’ Access to Care Act

We strongly support H.R. 7513, the Protecting America’s Seniors’ Access to Care Act, and related efforts to prohibit implementation of the final rule issued by the Centers for Medicare and Medicaid Services, titled “Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting” (CMS-3442-F) that was released on April 22, 2024, and is scheduled to be published in the Federal Register on May 10, 2024.

LeadingAge shares the Administration’s goal of ensuring access to the highest quality care in our nation’s 15,000 nursing homes. However, the final rule works against this shared goal due to its failure to address the chronic reimbursement challenges and workforce shortages impacting the health and long-term care continuum.

According to CMS’s own estimates, more than 79% of nursing homes will be required to hire additional registered nurses and nurse aides to comply with the rule at a cost of \$43 billion over the next 10 years. Nurse aides, who are the backbone of aging services, are in short supply. Further, the Health Resources and Services Administration projects a workforce shortage of more than 350,000 registered nurses in 2026 alone. Regulations and enforcement, even with the best intentions, just can’t change that math.

The existing workforce shortages are already resulting in backlogs at acute care hospitals, which are unable to discharge patients due to reduced capacity in post-acute, long-term care facilities. Further, home care and hospice providers – already navigating workforce challenges – will be short even more workers if they move to nursing homes. Shuffling the relatively small number of care workers available between settings won’t solve the problem. Furthermore, holding nursing homes to a standard that is impossible to meet because there are not enough workers in the country, then fining them for not meeting that standard, is going to force quality of care down -- not improve it.

Federal action on minimum staffing standards must be realistic to achieve its intended effect and should be preceded by serious workforce investments to attract, incentivize, and train registered nurses and nurse aides that are currently in short supply. Until there are enough qualified applicants and adequate funding to address these staffing shortages, we urge you to prohibit implementation of the final minimum staffing rule.

H.R. 3227: The Ensuring Seniors’ Access to Quality Care Act

In light of CMS’s recent release of the final rule on minimum staffing standards for long-term care facilities, we strongly encourage passage of H.R. 3227, the Ensuring Seniors’ Access to Quality Care Act, introduced by Representatives Ron Estes and Gerry Connolly.



Certified Nursing Assistants (CNAs) are an integral part of the long-term care workforce, and nursing homes will need to help train and hire thousands more of them to satisfy the recently issued federal minimum staffing standards. According to LeadingAge estimates, more than 78,000 additional full-time CNAs will need to be hired to comply with the minimum staffing rule.

Unfortunately, too many nursing homes have had their CNA training programs suspended due to an outdated provision in federal law. For almost 40 years, nursing homes fined above a certain monetary threshold have automatically lost their authority to train CNAs for a full two years. These suspensions have been required even if the fines are unrelated to the quality of care provided to residents or are caused by situations outside of a nursing home's control.

The Ensuring Seniors' Access to Quality Care Act would allow nursing homes that have addressed survey compliance issues to restart their training programs rather than having them suspended for an arbitrary two-year period. The ability to maintain strong training programs for CNAs is vital to the care of our nation's 1.2 million nursing home residents. Further, the need to train these caregivers will only increase as the share of the U.S. population over 65 years old rises.

We look forward to working with Representatives Estes and Connolly, as well as the members of the House Energy and Commerce Committee, to enact these much-needed changes to federal law.

H.R. 468: The Building America's Health Care Workforce Act

On June 6, 2022, CMS withdrew the flexibilities for temporary nurse aides (TNAs) to work in long-term care facilities for longer than 120 days under the COVID-19 Public Health Emergency (PHE)—even if they received proper training and demonstrated the necessary competencies.

Recognizing these issues and the value of having this much-needed pipeline flexibility, U.S. Representatives Brett Guthrie and Madeleine Dean led the introduction of H.R. 468, the Building America's Health Care Workforce Act, which would extend certain policies allowing TNAs to continue applying their experience and training for 24 months following the expiration of the COVID-19 PHE.

If enacted, this bill would again allow providers to hire nursing assistants through this temporary nurse pathway and put their on-the-job experience and training toward the 75-hour federal CNA training requirement. Resident safety protections would be maintained by requiring competency evaluations that assess TNAs on a variety of factors—including interpersonal skills, performing basic nursing and personal care skills, and mental health and social service needs. It would also promote resident quality of life and care by allowing these dedicated professionals, who served residents throughout the pandemic.

We respectfully request that you consider re-establishing these flexibilities to augment current staff in nursing homes.

Please reach out to Mollie Gurian, mgurian@leadingage.org and Todd Adams, tadams@leadingage.org regarding the contents of this statement.