May 5, 2020

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
U.S. Capitol Building, H-222
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
U.S. Capitol Building, S-230
Washington, DC 20510

The Honorable Kevin McCarthy
Republican Leader
U.S. House of Representatives
U.S. Capitol Building, H-204
Washington, DC 20515

The Honorable Charles E. Schumer
Democratic Leader
U.S. Senate
U.S. Capitol Building, S-221
Washington, DC 20510

Re: Continuing COVID-19 Requests

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

LeadingAge and our partners the Visiting Nurses Associations of America and ElevatingHOME, on behalf of our almost 6000 non-profit members who provide housing, health care and personal assistance to older persons and persons with disabilities, request that Congress consider the following actions in any additional legislation addressing the Public Emergency issued by the Administration. We very much appreciate the consideration given to many of the items we identified in our letters to you dated March 17 and April 3. This letter reflects the experience of our members over the past weeks and our assessment of the need for continued Congressional action.

COVID-19, the novel coronavirus, disproportionately affects older persons, persons living in close-quarters or congregate living, and the people who serve these elders. We hope you will continue to address the continuing challenges our members face in responding to this crisis and its extraordinary impact on them and the people they serve. From changing the way we operate our communities to having to navigate strict visitor policies to utilizing immense amounts of PPE and still wanting for more – our members have risen to the challenges in front of them and beyond but we still need more support for the current crisis and to be sure the Nation's safety net of aging services exists in the future, as the population continues to age. We are grateful for the supports our members have been able to access to date but our members' need for help continues.

Testing and Personal Protective Equipment

We appreciate that Congress and now the Administration have identified nursing homes as priorities, along with hospitals, to receive PPE. We understand that FEMA is going to be distributing 2 weeks of PPE for nursing homes through the states. While we appreciate this effort, it is simply not enough, and Congress and the Administration must do more.

- **Congress must prioritize all LTSS providers including federally-assisted affordable housing for PPE, testing, and other necessary infection control supplies to ensure safety.** Unfortunately, PPE, testing, and other infection control supplies are going to be an integral part of protecting the older adults our members work with as well as our staff for the foreseeable future. Even

reusable PPE wears out and loses its effectiveness. Access to ongoing testing is a critical part of keeping both our members and the broader community safe. Accurately assessing asymptomatic staff and residents, as well as persons who have the ever-expanding list of possible symptoms, is essential to identify and treat persons with COVID-19, protect persons who are not COVID-19, allow for accurate public reporting and transparency, and contribute to a safe re-opening strategy. Congress must provide for a national strategy to obtain sufficient amounts of PPE and infection control supplies as well as a national testing strategy. Further, all aging services providers, including housing, must be at the top of the priority list for these strategies. We support efforts to expand the use of the Defense Production Act to mobilize the medical and other supply chains to meet the needs of our communities.

- **Mandate uniform and unified reporting.** We strongly support transparency and accurate reporting of cases of COVID-19 in LTSS communities, both of residents and staff. Transparency and accuracy are essential to alleviate fear and drive good policy and practice. CMS has announced that it will require nursing homes to report to CDC as well as comply with state and local reporting requirements on COVID-19 cases and deaths. We strongly feel that multiple reporting requirements leads to confusion and increased probability of error. We have urged HHS and CMS to rescind this policy or to require CDC and the states to adopt a "one stop shop" reporting procedure. We now recommend that reporting be at the state level and that CDC coordinate to receive information from the states; state reporting is already in use and obviates the need for nursing homes to learn a new system. We have found that there are significant problems accessing CDC training for the new system, including extensive commitment of precious staff time. We agree that accurate reporting is critical to overcoming this crisis but strongly believe that "one stop shop" for reporting will increase the accuracy and therefore the value of the data received.

Health Care Funding

We appreciate that the CARES Act included all Medicare and Medicaid Certified providers including long term services and supports (LTSS) providers in the Public Health and Social Services Fund (PHSSF) as well as the increased funding added to the PHSSF via the Paycheck Protection Program and Health Care Enhancement Act. We also appreciate that HHS rapidly got monies out of the initial $100B to our Medicare provider members including skilled nursing facilities, home health, and hospice. We understand that HHS plans to distribute funds from that tranche to Medicaid providers as well and underscore the urgency of these monies reaching both our HCBS and nursing home members who rely predominantly on Medicaid funds. However, our members face both a continued and future state in which more funding will be critical – PPE and staffing costs remain high and our members continue to struggle with lost and decreased revenue. We ask Congress for the following to help our providers not only weather the crisis, but survive into the future:

- **Monitor and oversee the distribution of remaining funds.** Congress must monitor and provide direction to HHS for distribution of the additional PHSSF funds, with a focus on ensuring that providers are compensated based on expenditures and need as well as billing. In addition, funds should be specifically directed to HCBS providers and PACE organizations.

- **100 billion dollars for LTSS providers.** Congress should allocate 100 billion dollars specifically for LTSS providers, as we requested in our April 3 letter, and these dollars should continue to be

available through September 2022 to address the likely long-term consequences of this pandemic. Congress should set aside these funds to assist not only providers who rely predominantly on Medicare, like home health and hospice, but also to assist nursing homes across their payment streams (Medicare, Medicaid, and Medicare Advantage), home-and community based service providers, adult day, and PACE. In addition, privately funded aging services providers like our nonprofit continuing care retirement communities and assisted living should be included. Specifically, in our joint letter with the National Adult Day Services Association dated April 3 we requested $455M to cover the costs of one month closure of adult day programs; we request $1B out of this or any other available fund to cover two months. Our April 28th letter with other national hospice stakeholders outlines our ask regarding specific funding for hospice providers.

Housing

There are several thousand federally-assisted, affordable senior housing communities for older adults with low incomes in the United States. Residents in these communities have more chronic conditions than their peers without housing assistance. Meanwhile, there are 5 million older adult households who spend more than half of their incomes for housing, forcing them to choose between housing, food, and healthcare, who need housing assistance. These communities are independent living environments where residents are very successfully encouraged to age in community. Residents of federally-assisted senior communities have networks of resident-coordinated and building-coordinated service providers coming and going from their buildings 24 hours a day to achieve the goals of aging in community.

Housing as an Infrastructure Investment

- **$1B for New Section 202 Homes**. A $1 billion infrastructure investment would result in short- and long-term jobs, as well as 3,800 affordable senior homes with Service Coordinators in the affordable housing community. When only Section 202 dollars are used to build and operate these homes, they can be built quickly rather than bogged down in the multiple processes and timelines when other resources must be used.

COVID-19 Response

- **$150M for HUD-assisted senior housing communities to secure supplies / disinfection / preparedness / personal protective equipment.** Without proper supplies, senior affordable housing communities have no way to safely enter resident apartments for needed health and safety repairs, or to screen service providers and other visitors to these independent living apartments.

- **$295M for staffing support in HUD-assisted senior housing communities**. This would provide affordable senior housing communities needed resources to hire replacement staff as regular and full time staff may not be able to work.

- **$1.4B for federally-assisted housing supports**. These resources are needed to make up for decreased rents from HUD- and USDA-assisted older adult residents, to cover the costs of necessary vacancies, for COVID-19 costs, and for emergency housing assistance to ensure housing affordability for older adult residents of Low Income Housing Tax Credit housing, etc.

- **$300M for Service Coordinators**. While we appreciate the $10M dollars in the CARES Act, it was not sufficient for what is needed in our communities. Of this amount, $20M is needed for

existing, budget-based Service Coordinators and $10M is needed for existing, grant-funded Service Coordinators to address immediate COVID-19-related costs. Statutory language is also needed to ensure speedy access to these resources and that the eligible uses for Service Coordinator funds are expanded to include flexibility for COVID-19-related costs that support residents' health and wellness needs. The remaining $270M investment is needed to enable communities without a Service Coordinator grant to employ one. Fewer than half of HUD assisted senior housing communities have the resources they need to employ a Service Coordinator.

- **$50M for WiFi for federally-assisted senior housing**. There is a need to install WiFi in federally-assisted housing communities, and to help residents access internet in their units. Most federally-assisted senior housing communities do not have building-wide WiFi, which would allow for telehealth services in common spaces, in individual apartments, help overcome language barrier, and to help residents from outside the building. WiFi would also help Service Coordinators assist and engage residents and help combat social isolation.

- **$5M to support mandatory meal programs in HUD-assisted senior housing communities**. Provide $5 million in financial relief to HUD senior housing communities with mandatory meal programs which have become much more expensive, complicated, and difficult to administer during the pandemic.

- **$7 million for a one-year IWISH extension**. As soon as possible, provide $7 million for a one-year extension of HUD's 40-site Integrated Wellness in Supportive Housing, as authorized under the Fiscal Year 2014 Consolidated Appropriations Act. For the regular FY21 HUD appropriations bill, LeadingAge is seeking a $14 million, two-year demonstration of this demonstration. Extension is needed as soon as possible so the demonstration-funded Wellness Nurses and Service Coordinators can continue their critical work.

Implementation and Expansion of Previous Congressional Efforts

We appreciate all the work done in the first four bills to provide relief to our aging services system and our providers as they continue to be under unprecedented strain. The following requests address implementation of provisions from those groundbreaking bills and request that certain provisions be expanded to provide the intended relief.

- **Expand Home Health emergency telehealth authority to allow for payment.** Our home health members face new and challenging conditions – including difficulty in accessing homes because patients are afraid to let workers inside, coupled with increased numbers of potential patients being released from hospitals and not going to SNFs. It is critical that home health agencies be able to count telehealth visits as part of a unit of services. CMS has indicated that this request can only be addressed through a change in law. We ask that you amend Sec. 1895 of the Social Security Act to allow telehealth visits to count as part of the payment system so long as these visits are included in the plan of care, for the duration of the Public Health Emergency. This change is essential to achieve the flexibility Congress intended in expanding telehealth availability.

- **Ensure the newly eligible telehealth originating sites (urban nursing homes, assisted living, and retirement communities) are eligible for the originating site fee.** Consider increasing that fee so these newly eligible entities are compensated for costs like connectivity, lease of equipment, and special training to assist the distant provider.

- **Create a site-neutral step-down payment stream.** This could be part of the $100B funding request made at the beginning of this letter or separate. To fully implement the CARES Act provision regarding the creation of extended care settings, we suggest creating a site-neutral step-down program with a dedicated financing stream that is robust enough to support this type of care that would normally be delivered in a hospital, including the addition of professional staff that is not normally required in nursing homes or other post-acute settings. Creating this funding stream would also allow empty spaces in our continuing care retirement communities or hospice inpatient units to be better utilized.

- **Allow private nonprofits of any size to access the Paycheck Protection Program and increase the length of time it is available.** We have nonprofit members who belong to faith-based associations or are part of other congregate arrangements who are suffering from this crisis and would benefit from access to this program so that they may retain staff and add sufficient funding to the PPP program so that newly eligible entities can take advantage of the program

- **Mandate that the Main Street Lending program include private nonprofits.** The Federal Reserve is interpreting this program to exclude nonprofits which prohibits our members who would otherwise be eligible from being able to access this critical resource. We ask that Congress explicitly instruct the Administration to make the Main Street Lending program and any other program designed to help businesses stay operational through the crisis include private nonprofits. We urge that this program be available through September 2022 to address long-term economic impact of COVID-19 on aging services providers.

- **Increase reimbursement for unemployment insurance for nonprofits that self-insure.** We urge Congress to amend the CARES Act to increase the federal unemployment insurance reimbursement for self-funded nonprofits to 100% of costs. Without this relief, nonprofits that self-fund are likely to be subject to significant costs later this year, when they will have to repay their state unemployment insurance funds for the full cost of insurance for their laid-off employees. Other employers are likely to see no or little increased cost. This is inequitable and potentially financially devastating just as the economy is beginning to recover.

- **Increase the FMAP percentage.** While the 6.2% increase in the Families First Act provided states with needed federal Medicaid funds, it is clear that the pandemic will require an even greater investment to protect the Medicaid program, ensure access for Medicaid beneficiaries, address need for staffing incentives, among other needs. As states continue to see losses from tax revenues, federal assistance will be critical. We recommend increasing the enhanced federal share from 6.2% to 12%, and this increase should last until the states are financially viable. In addition, the maintenance of effort provisions in Families First must be maintained.

- **Continue suspension of Medicare sequestration.** We urge that the reduction in Medicare payments resulting from sequestration continue to be suspended through 2022 so that LTSS

Medicare programs will have the ability to adjust to expected changes in usage, as noted in our introduction.

- **Permanently extend the Money Follows the Person program (Sec. 3811 of the CARES Act) and the Spousal Impoverishment Protections (Sec. 3812).** Both programs are critical to allowing Medicaid beneficiaries to remain in their personal home and reduce state Medicaid costs.

Statutory and Regulatory Relief

- **Count COVID-19 as "skilled need" so Medicare providers can be compensated for PPE, testing, and other items needed to address this public health emergency.** At this point, it is not clear how providers who do testing will be reimbursed, but from what we have seen, providers will not necessarily be made whole for the cost of testing and treatment.

- **Create a funding source specifically for increasing pay for frontline workers, including aging services healthcare and housing**. We strongly support efforts to increase pay for frontline workers. We hear from members who are paying premiums to their staff from their reserves, but this is not viable even in the short-term and does not necessarily reach workers in lower income settings reimbursed by Medicaid or HUD. A dedicated fund that recognizes that frontline staff are vital and incentivizes them to work in hazardous conditions is critically needed and money very well spent.

- **Income Recertification and Verification.** Adjust statutory language regarding income recertifications in HUD-assisted housing for flexibility around the requirement for annual recertifications and verification, while preserving the current ability to conduct interim recertifications if a tenant reports an income change.

- **Minimum Rent.** We also recommend that the statutory requirement for a minimum rent in federally-assisted housing be suspended.

- **Low Income Housing Tax Credits**. A number of programmatic deadlines required under the Internal Revenue Code for Low Income Housing Tax Credit communities could be difficult or impossible to meet as development slows due to COVID-19. To provide immediate assistance to LIHTC properties, we support immediate statutory actions in the form of one-year extensions for three key deadlines: 10 percent test deadlines, placed in service deadlines, and rehabilitation expenditure deadlines.

- **Delay Medicaid Fiscal Accountability Regulation (MFAR) and electronic visit verification payment reduction**. We strongly support the provision in the Take Responsibility for Workers and Families Act that requires that the Secretary should not be allowed to take action on the MFAR rule for two years after the end of the public health emergency. We also support the provision suspending FMAP reductions related to electronic visit verifications.

- **Expand the availability of hospice respite care to promote caregiver relief and safe discharge.** We propose that the hospice inpatient respite benefit be allowable for more than 5 days during the emergency if the hospice judges that it cannot safely discharge or transfer the patient. We also propose that hospices be permitted, on a permanent basis, to provide respite care in a

patient's place of residence when circumstances prohibit its provision in a facility setting, or when it is the preference of the patient and family, and that this care be paid at the inpatient respite level. This home respite care should also be allowable for more than 5 days during the emergency. We refer you to the letter sent on April 28th by the national hospice stakeholders for further recommendations.

- **Allow verbal orders for home health.** Professionals who can order home health must sign written orders and certify in writing that patients are eligible for home care in order for home health agencies to bill for services. In the current environment, physicians, advanced nurse practitioners, and physician assistants are increasingly unavailable to sign home care documents, making even electronic signatures extremely difficult to obtain. Having the flexibility to rely on documented verbal orders and eligibility certifications would expedite safe discharges and referrals to home care. We ask that Congress allow for verbal orders and eligibility certifications for the duration of the emergency.

Flexibility Through Other Legislation

- **Address the need for technology to support virtual visits in nursing homes, assisted living, and other congregate settings.** We support including the bi-partisan ACCESS Act (H.R. 6487/S. 3517) in the next bill. This legislation would authorize payments to nursing homes to purchase technology to be used to facilitate virtual visits for residents and families. In addition, the bill calls for a congressional briefing by the Secretary on access to telehealth in nursing homes. We urge expansion to include other congregate settings like assisted living, memory care, and housing.

- **Amend the Rural Healthcare Connectivity Act to make rural home health providers eligible for subsidized internet connectivity.** This is key to ensuring access to telehealth in rural and frontier areas, both during and after this public health emergency.

- **Allow for grants to support Medicaid HCBS providers during the crisis.** We recommend including Section 202 of the Coronavirus Relief for Seniors and People with Disabilities Act of 2020 (H.R. 6305/S. 3544), which gives the Secretary of HHS the authority to award Medicaid HCBS grants to respond to the COVID-19 public health emergency. These grants support activities that strengthen states' HCBS benefit. This provision should be expanded to include the Program for All Inclusive Care for the Elderly (PACE).

- **Reinstate in-house certified nursing assistant training programs for all nursing homes that are in compliance**. One of the major challenges for nursing home staffing is closure of training schools for certified nurse assistants (CNAs) and in this time of unprecedented workforce crisis, the inability for all nursing homes in compliance to utilize these training programs is underscored. We urge you to include either HR 4468, the Nursing Home Workforce Quality Act, or the more comprehensive S. 2993, the Ensuring Seniors' Access to Quality Care Act which would direct CMS to allow all nursing homes that are in compliance and that have programs to continue those programs, and going forward, to allow all nursing homes that are in compliance to conduct their training programs which would alleviate workforce shortages now and in the future.

- **Prevent unnecessary hospitalizations and improve access to physicians in nursing homes through expanded telehealth.** Help older adults residing in SNFs reduce unnecessary hospitalizations and hospital readmissions by including the RUSH Act of 2020 (H.R. 6209/S. 3447) as a way to maintain and improve the ability of nursing homes to use telehealth to access physicians.

- **Give home health agencies their full payment so they can continue delivering high quality care during the crisis and beyond.** Consistent with the Home Health Payment Innovation Act (S.433/H.R.2573), we ask that you direct CMS to eliminate behavior assumption adjustments in the Medicare home health payment system for 2020.

- **Enhance the hospice and palliative care workforce.** The COVID-19 crisis has underscored the need for the passage of the Rural Access to Hospice Act (H.R. 2594/S.1190) and the Palliative Care Education and Training Act (S. 2080; H.R. 647 already passed out of the House). Both bills would alleviate workforce shortages and unpreparedness that are being underscored by the COVID-19 crisis.

- **Increase access to advance care planning**. We recommend that Congress expand the providers eligible to bill the advance care planning codes to clinical social workers and registered nurses, waive the deductible and cost-sharing for advance care planning visits, and allow for advance directive portability. These provisions would allow for increased access to advance care planning and to advance directives which are particularly critical during COVID-19.

Address Elder Abuse in the Community

Our members who have elder abuse shelters report a significant increase in abuse in the community, as older persons are isolated by social distancing requirements and increasingly dependent on family and other persons who may abuse, neglect or exploit them. Two areas that can be implemented now:

- **Reauthorize the Elder Justice Act** to ensure additional funding and resources to protect older persons.

- **Fund the Advisory Board on Elder Abuse, Neglect and Exploitation**, composed of stakeholders from the field, which was authorized by the Patient Protection and Affordable Care Act.

Proposed Studies

- **Direct the National Academies of Science and Medicine (NASEM) to study the impact of current regulations on nursing home quality**. This unprecedented crisis provides a real-life opportunity to examine the impact of regulation on quality, and to expand to an in-depth examination of what is quality and how can it best be achieved. For example, the role of surveyors in the current crisis has expanded to provide more technical assistance, and this shift also should be examined as an element of future regulatory change. We request an appropriation of $1M for this study, which would revisit how our nation delivers, regulates, and measures the quality of nursing home care.

- **Direct NASEM to examine the impact of expanded telehealth on providing care and services in the aging services field.** We can use this opportunity – where long-standing restrictions have been waived and new opportunities arisen – to understand better the role of technology and telehealth in delivering care and services throughout aging services and to identify how to incorporate 21st century technology into this field.

Future of Aging Services Commission

- **Establish a Post-COVID-19 Bipartisan Congressional Commission on the Future of Aging Services.** The coronavirus has been especially deadly to people over age 60, even more so those over age 85. Aging services organizations across the continuum of care have been called to service; while they provide an essential service the crisis is demonstrating that we have not paid proper attention to the fact that nation lacks a coherent infrastructure to finance and deliver high quality care to older people who need support.

  Shortages of PPE and other supplies and lack of access to testing have proven most deadly in aging services provider environments. Staffing shortages, already a crisis pre-COVID have become desperate emergencies. We promote home and community based services, but we provide neither the housing nor the services to make good on our aspirations. The Bipartisan Congressional Commission would be charged with examining the impact of the crisis on the quality, infrastructure, and financing of aging services and making recommendations to Congress that will put this essential safety net in a strong position to safely serve the growing aging population in coming decades.

  We recommend that this Commission be composed of bipartisan Members of Congress, aging services experts, state and local officials, providers, and older adults. We also strongly believe that this Commission must come up with recommendations that are actionable and where the opportunity for action exists. Some ideas for this include: making sure the Commission's recommendations have to be subject to a Congressional vote and creating a funding stream via a new ongoing entity to implement the recommendations (a la a CMMI like model).

Conclusion

We reiterate our thanks for the significant work you have been doing in an incredibly short period of time to address this unprecedented crisis. We look forward to working with you moving forward both to implement the legislation already passed and to address critical unmet needs in future legislation. For further information, please contact Ruth Katz, Senior Vice President, Policy, rkatz@leadingage.org.

Sincerely,

Katie Smith Sloan
President and CEO LeadingAge
Acting President and CEO, VNAA/ElevatingHOME