

April 3, 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: Asks for Relief for COVID-19 Package 4

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

LeadingAge and our partners the Visiting Nurse Associations of America and ElevatingHOME, on behalf of our 6,000 non-profit members who provide housing, health care and personal assistance to older persons and persons with disabilities (collectively referred to as LTSS), requests that Congress consider the following actions in any additional legislation addressing the Public Health Emergency issued by the Administration. We appreciate the consideration given to many of the items we flagged in our letter to you dated March 17<sup>th</sup>, 2020. This letter reflects the experience of our members over the past weeks and our assessments of the need for continued Congressional action.

*Personal protective equipment (PPE) and testing*

An overwhelming concern, for all of our members, is access to PPE. Our members' experience with accessing essential equipment and supplies is distinct than those of our hospital partners who are prioritized when PPE is available (overall availability remains a pressing concern). While we understand the vital need for PPE in the inpatient setting, there is a major push now to move patients out of hospitals to nursing homes or to home and community-based settings, including back to their homes in independent senior living including federally-assisted affordable housing. Without PPE, our members cannot safely orchestrate these transitions, take care of new or current patients, or protect their staff. We also cannot effectively protect our staff or our patients and residents without knowing who has COVID-19. Therefore, the federal government must be more directive in how testing is prioritized until such time that testing is more widely available. Older persons are identified as at greater risk, especially older persons in healthcare and senior housing settings that already are seeing COVID-19 cases, and the employees who serve persons at risk are themselves at greater risk.

Therefore, in addition to the funding requests we make below which will assist with the purchase of PPE, we make the following recommendation:

- **Create priority categories for PPE distribution and testing.** Congress needs to clarify in statute that LTSS providers including hospice, home health, home and community-based providers

(including adult day and PACE), federally-assisted affordable housing providers, and disability providers are granted priority access to the anticipated increase in PPE that will become available with increased funding and distribution overseen by FEMA. In order to accomplish this goal, we recommend utilizing the U.S. Department of Homeland Security's Cybersecurity Infrastructure Security Agency (CISA)'s definition of essential health care workers to create a federal directive regarding priority status for PPE distribution and testing for employees and residents or tenants of our LTSS communities and people served by home-based providers.

### *Health Care Funding*

The increased costs of additional staff leave, overtime, PPE and other supplies coupled with the decreased revenues resulting from decreased admissions and changing case-mix is already causing shortfalls for all of our providers. While we appreciate the money that was put forth in the CARES Act, our providers will not have access to the same level of funding as other types of providers (like hospitals) and it is unclear at this point how some of the CARES Act monies will be distributed. This crisis continues and any future stimulus package should include money to pay for current increased costs that programs are spending on patient and staff safety and to mitigate losses so that these essential providers can continue to operate into the future.

- **Increase Medicare reimbursement rates by 5% for nursing homes, home health, PACE and hospice agencies:** We believe that this would reach our providers the most quickly and allow them both to continue to serve patients in the current crisis and also hopefully also maintain some reserves for business post-crisis. We would also ask that any rate increases approved for Medicare Advantage and Special Needs Plans include language that provider rates should be increased a similar percentage.
- **\$100 billion provider assistance program for nursing homes, home health, hospice, HCBS, adult day, and PACE providers.** Amend the Health Provider Assistance Program (section 70562 from a draft of the *Take Responsibility for Workers and Families Act*) to specify that the monies will be specifically allocated for aging and disability services providers. In a joint letter with the National Adult Day Services Association, we request \$422.5 million specifically for adult day services providers. In a joint letter with national hospice stakeholders, we requested \$3 billion dollars for hospice and palliative care providers. These requests could be part of this provider assistance program.

### *Housing Funding*

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 apartment.
- **\$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.

### *Implementation and Expansion of Previous Congressional Efforts*

We appreciate all of the work done in the first three bills to provide relief to our system and our providers as they are under unprecedented strain. We present the following asks regarding implementation of provisions from those groundbreaking pieces of legislation and the expansion of certain provisions to provide the relief intended.

- **Expand Home Health emergency telehealth authority to allow for payment.** It is critical that home health agencies be able to count telehealth visits as part of a unit of service especially since we anticipate serving patients released from the hospital or sheltering at home with COVID-19. CMS has indicated that this request can only be addressed through a change in law. We ask that you amend section 1895(e) of the Social Security Act to allow telehealth visits to count as part of the payment system so long as telehealth visits are included in the plan of care for the duration of the public health emergency. Telehealth services can serve as a critical supplement to in-person home health visits and should be counted as eligible for payment at this time. Without this adjustment, the flexibility intended by the Congress in expanding telehealth flexibility cannot be fully realized.
- **Create a site neutral step-down payment stream.** 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. The creation of this funding stream would also allow empty spaces in our continuing care retirement communities or hospice inpatient units to be utilized as well.
- **Allow private nonprofits of any size to access the Paycheck Protection Program.** We have a number of nonprofit members who are suffering financial consequences from the crisis who would benefit from access to this program and would be able to gain access with these changes.
- **Increase the FMAP percentage.** While the 6.2 percentage point increase from the Families First Act provided states with needed new federal Medicaid funds, the pandemic will require an even greater investment. We recommend increasing the enhanced federal share from 6.2 to 8 percentage points.
- **Allow for grants to support Medicaid HCBS providers during the crisis.** We support Section 70301 in the *Take Responsibility for Workers and Families Act* which gives the HHS Secretary the authority to award Medicaid HCBS grants to respond to the COVID-19 public health emergency – these grants would support activities that strengthen their home- and community-based services (HCBS) benefit. This provision should be expanded to include the Program for All Inclusive Care for the Elderly (PACE).

### *Statutory and Regulatory Relief*

- **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.
- **Neutral Payment Adjustment for Quality Reporting Programs:** For the skilled nursing facility (SNF), home health, and hospice programs, we ask for relief from the 2% rate penalty for Medicare rates impacted by 2020 calendar year data. In addition, for the SNF Value-Based Purchasing Program we ask for the same site neutral payment adjustment relief that has already been given to physicians under the MIPS program and to Medicare Advantage and Special Needs Plans related to their respective quality programs. For all of these programs, we would be concerned about applying the payment adjustments or penalties based on the shorter performance period.

#### *Flexibility through other legislation*

- **Allow nursing homes to access their training schools for certified nursing assistants.** 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 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 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 as drafted in the 115<sup>th</sup> Congress' *Patient Choice and Quality Care Act*. These provisions would allow for increased access to advance care planning and to advance directives which is particularly critical during COVID-19.

#### *Addressing 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.

Thank you for the significant work you have been doing 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](mailto:rkatz@leadingage.org)

Sincerely,



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