



Leadership Council  
of Aging Organizations

***Max Richtman, Chair***

February 23, 2021

U.S. Senate  
Washington, D.C. 20510

Dear Senator:

On behalf of the Leadership Council of Aging Organizations (LCAO), I am writing to urge you to prioritize the health, community-based services and supports, and economic security needs of older adults as you move forward with budget reconciliation and efforts to address the devastating effects of the COVID-19 pandemic.

LCAO is a coalition of 69 national nonprofit organizations concerned with the well-being of America's older population and committed to representing their interests in the policy-making arena. While our members are grateful for the previous legislative packages that you have crafted to address the pandemic that have become law, much more is needed to support older Americans facing health, services, and economic crises. Further, we ask that you keep in mind that older adults are not just beneficiaries and recipients but are active participants in efforts to address the pandemic, assisting in implementation of various programs and community service, especially around COVID outreach and vaccine deployment.

In this letter, we provided prioritized policy and funding recommendations for future COVID relief legislation under three broad categories -- health, community-based supports and services, and income security. We also want to call your attention to the need for resources for equitable distribution of services and vaccines and language-appropriate information for older adults most at risk of COVID-19 in diverse communities. We urge Congress to adopt these recommendations during the budget reconciliation process or other legislative vehicles as soon as possible.

## **HEALTH CARE**

### **Medicaid**

**SUMMARY:** Medicaid responds automatically to health and economic crises, expanding as needed to meet health care needs. Thus, during a recession, both the number of people enrolled in Medicaid and program spending grow, and the reverse occurs in better economic times. Medicaid funding has become more urgent than ever as COVID-19 has raged through nursing homes and other institutional settings. An [estimated 800,000 Americans](#) are on waiting lists to receive Medicaid Home and Community Based Services (HCBS) and some older adults have had to [wait five years or more](#) to access services. More funding for the Medicaid program and, in particular, HCBS is needed now during the pandemic, as unemployment remains high and states are making deep cuts to their Medicaid programs due to budget shortfalls. Moreover, given the

disproportionate risk of COVID-19 associated with nursing homes, HCBS are vital to enabling older adults and people with disabilities to remain in or return to their homes.

**ACTION REQUESTED:** LCAO strongly urges Congress to implement the following actions: (a) Expand the Federal Medical Assistance Percentage (FMAP) to at least 14 percentage points (a 7.8 percentage point increase) to sustain Medicaid programs in all 50 states, the District of Columbia (DC), and U.S. territories; (b) Increase FMAP by at least another 10 percentage points to support and expand Medicaid HCBS—which, as an optional service under Medicaid, is at great risk of being cut, and (c) Retain the maintenance of effort protection in the forthcoming COVID-19 package. Without such increases, cuts to Medicaid enrollment, services, and provider rates might be required thereby reducing access to crucial care and services.

### **Medicare Enrollment**

**SUMMARY:** Older adults and people with disabilities are at high risk of infection and serious complications from COVID-19. Those who have experienced mismanaged Medicare enrollment transitions may find themselves without adequate coverage during this crisis. As a result, they may not seek or be able to obtain affordable medical treatment if they contract COVID-19. Recognizing this, the Centers for Medicare & Medicaid Services (CMS) previously took steps to ease enrollment. On May 5, 2020, CMS [clarified the availability](#) of a Medicare Advantage (MA) and Part D Special Enrollment Period (SEP) for qualifying individuals affected by the pandemic. This SEP, which ended on June 30, 2020, allowed people to make changes to their MA or Part D coverage if they were prevented from doing so during the COVID-19 public health emergency (PHE) or as a result of the pandemic. Because CMS does not [currently have the statutory authority](#) to establish such a PHE-specific SEP for Premium Part A and Part B, the agency relied on an administrative remedy, equitable relief, to facilitate those enrollments over a similar time period. Although these two policies were helpful while they were in place, they were not sufficient in scope or duration to meet the needs of all Medicare-eligible individuals who are without adequate coverage. Nor did they recognize the need for future relief. Individuals who make enrollment mistakes during the pandemic may not discover these errors until after the end of any PHE-related enrollment periods. Under the current equitable relief policy, there is no clear remedy to mitigate such problems.

**ACTION REQUESTED:** LCAO urges Congress to implement the following actions through — at a minimum — the calendar year in which the PHE ends: (a) Direct CMS to use existing authority to reinstate and strengthen the SEP for MA and Part D; (b) Establish a dedicated SEP for Premium Part A and Part B, with coverage beginning (at the latest) the first day of the next month; (c) Expand the basis of equitable relief to include good-faith reasons, such as pandemic-related enrollment problems.

### **Medicare & Telehealth**

**SUMMARY:** LCAO appreciates the attention on telehealth outlined in previous packages. Continued access to telehealth is critical to continuity of care for older people and to reducing community transmission during the COVID-19 pandemic, and telehealth offers tremendous potential to increase access to care for older adults as the country moves beyond the current crisis. Yet, longer-term or permanent extensions of telehealth must be done deliberately and in a manner that does not exacerbate existing inequities in access to care; that complies with HIPAA privacy protections and provides for the associated need for additional infrastructure; and that

ensures clear communication among payers, providers, and beneficiaries regarding beneficiary cost sharing.

**ACTION REQUESTED:** LCAO urges Congress to (a) establish a glide path that prevents any beneficiary’s access to telehealth services from ending abruptly following the end of the PHE; (b) require continuing study by the U.S. Department of Health and Human Services (HHS) regarding telehealth utilization and impact; and (c) require continuing study by HHS of MedPAC data on access and beneficiary characteristics, as well as data from MA and Medicare Part A, Part B, and Part D.

## **Nursing Homes**

**SUMMARY:** More than one million Americans reside in a nursing home. It has been widely established that older adults, people with disabilities and those with underlying health conditions — in other words the vast majority of the nursing home population — are at disproportionate risk of serious complications and death from COVID-19 infection. Although only [six percent](#) of the country’s cases have occurred in long-term care facilities, deaths related to COVID-19 in these facilities account for about [42 percent](#) of the country’s pandemic fatalities. Nursing home staff have also been at great risk for contracting, passing on, and dying from COVID-19. Some of these infections and deaths could have been prevented by a federal commitment to ensuring that personal protective equipment (PPE) was provided to all nursing home staff, residents, and visitors. This reality, along with COVID-19 data and an exacerbation of loneliness and social isolation among nursing home residents, makes clear a dual imperative to improve both safety and quality of life for people who call nursing homes “home.”

**ACTION REQUESTED:** LCAO urges Congress to (a) identify appropriate ways to support better staffing levels; (b) implement interventions on an ongoing basis to mitigate resident social isolation and loneliness; and (c) include nursing homes that predominantly serve communities of color in any study of and attempts to decrease health disparities related to race and ethnicity. Furthermore, the coalition urges Congress to authorize funding for (a) sufficient quantities of respirators (N95s and reusable respirators) and other PPE to supply nursing home staff, personal aides, volunteers, visitors (including family members as identified by each resident), surveyors, and long-term care ombudsmen; and (b) accurate point-of-care testing of staff, residents, and visitors. For these goals to be achieved, an effective supply chain and funding for the production and distribution of respirators, other PPE, and testing supplies to nursing homes must be established and rapid turnaround of test results must be provided.

## **COMMUNITY-BASED SERVICES AND SUPPORTS**

### **Aging Services**

**SUMMARY:** The Older Americans Act (OAA), administered through the Administration for Community Living (ACL) and the Employment and Training Administration (ETA) is the backbone of our nation’s home and community-based aging services system, providing older adults with much-needed services that include home care, congregate and home-delivered meals, case management, caregiver support, transportation, health promotion and disease prevention, legal services, elder rights protections, community service employment opportunities for older adults with low incomes, and ombudsman programs; which help protect and advocate for residents in nursing homes and assisted living facilities. OAA programs have been particularly

critical in responding to the pandemic, ensuring that those older adults most at-risk of COVID-19 and in greatest need receive services that address their health, social, and nutritional needs. Critically, the Aging Network is and will continue to be essential to vaccine deployment, providing trusted education and outreach as well as wrap-around services such as assistance with scheduling, transportation and case management that are needed to achieve widespread vaccination among all older adults. Additionally, the Elder Justice Act (EJA) is the first comprehensive legislation to address the abuse, neglect, and exploitation of older adults through coordination of federal responses to elder abuse, promotion of elder justice research and innovation, investment in Adult Protective Services (APS) systems, and supporting additional protections for residents of long-term care facilities. Given the extended duration and magnitude of this public health crisis and the vastly increased need for OAA and EJA services as a result, **additional funding is necessary to enable those older adults most at-risk of COVID-19 and in greatest need to continue receiving services.**

**ACTION REQUESTED:** Specifically, we urge lawmakers to ensure that a final emergency supplemental funding package incorporates the following for ACL and ETA aging programs and services:

- \$750 million for Congregate and Home-Delivered Nutrition Services (Title III-C)
- \$25 million for Native American Nutrition, Supportive and Caregiver Services (Title VI)
- \$480 million for Supportive Services (Title III-B)
- \$44 million for Evidence-Based Health Promotion and Disease Prevention (Title III-D)
- \$145 million for Caregiver Services (Title III-E)
- \$500 million for the Senior Community Service Employment Program (Title V)
- \$20 million for the State Long-Term Care Ombudsman Program (Title VII)
- Guaranteed \$188 million for the Elder Justice Act in FY 2021 and FY 2022 to support Adult Protective Services (APS) and Long-Term Care Ombudsman Program activities

## **Housing**

**SUMMARY:** Quality affordable housing is the foundation to aging in community, whether rural, urban, or in between. Successful housing models for older adults are affordable and adaptable to allow for the inclusion of long-term services and supports (LTSS) as needed. The combination of affordable housing and supportive services is often the only alternative low-and moderate-income older adults have to nursing home care.

**ACTION REQUESTED:** Any forthcoming COVID-19 relief package must also include funding for Department of Housing and Urban Development (HUD)-subsidized low-income housing, where 750,000 older Americans live. This critical funding must include emergency assistance for HUD-assisted housing communities that serve older adults. We urge Congress to fund \$300 million for one-year Emergency Service Coordinator grants to those HUD Section 202 communities that do not have service coordinators on staff to assist residents with services. Statutory language should ensure speedy access to these resources and specify that eligible uses include flexibility for COVID-19-related costs that support residents' needs including PPE and the installation of wireless internet for properties to assist. Service Coordinators need wireless

internet capability to help residents with telehealth appointments, accessing benefits, facilitating communication, and to combat social isolation.

### **Supplemental Nutrition Assistance Program (SNAP)**

SUMMARY: The Aging Services Network continues to report that access to food is the top concern of the older adults they serve. The Supplemental Nutrition Assistance Program (SNAP) is the largest federal nutrition program, but older adults remain underserved and their benefit levels are low despite the effectiveness in the program in supporting the health and wellbeing of participants. The average [SNAP benefit for households with older adults](#) is \$121 per month, compared to \$280 for other households. Over 1 million SNAP households with an older adult, or over one-fifth of all these households, receive the minimum benefit of \$16. [Older adults also have traditionally accessed the program at lower rates](#) compared to other groups with only 48 percent of eligible individuals age 60 and over participating in the program prior to the pandemic. However, the widespread health and economic impact of COVID-19 has resulted in more food insecure seniors and families, and a greater number of individuals who rely on or are in need of assistance to afford the food that they need.

ACTION REQUESTED: LCAO strongly supports extension of the 15 percent SNAP benefit increase at least through September 30, 2021. We further support efforts to increase SNAP participation among eligible seniors and their households. LCAO also supports the continued expansion of the online grocery shopping SNAP pilot and urges Congress to provide additional funding for mobile technology improvements and other technical assistance to states and retailers.

## **INCOME SECURITY**

### **Strengthen and Restore the Supplemental Security Income (SSI) Program**

SUMMARY: The Supplemental Security Income (SSI) program provides vital and much needed economic security for almost 8 million low-income seniors and people with disabilities, including children with marked and severe functional limitations.<sup>1</sup> Unfortunately, Congress has failed to keep the SSI program up-to-date for our nation's most vulnerable Americans who depend on SSI to meet their basic needs. And the pandemic has laid bare the inadequacy of this safety net program.

ACTION REQUESTED: Make long-overdue improvements to SSI. First, raise the federal benefit rate to 100 percent of the federal poverty level and include provisions in budget reconciliation legislation such as those in the Supplemental Security Income Restoration Act (introduced in the 116<sup>th</sup> Congress).<sup>2</sup> This bill would raise the general income exclusion to \$123 per month and the earned income exclusion to at least \$399 per month; increase the asset limit to \$10,000 for an individual and \$20,000 for a couple; and eliminate the reduction in benefits for in-kind support.

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<sup>1</sup> [Monthly Statistical Snapshot, January 2021 \(ssa.gov\)](#)

<sup>2</sup> S. 2753/H.R. 4280

## **Lower the burden of proof for age discrimination cases**

**SUMMARY:** Age discrimination in employment is pervasive in the 21st century. When older workers try to enforce their right to be treated equally, they find it exceedingly difficult to prove discrimination. The U.S. Supreme Court, in *Gross v. FBL Financial Services, Inc.* (2009), set a higher standard of proof for age discrimination than previously applied.<sup>3</sup> The level is higher than for other forms of discrimination and since *Gross*, court decisions have continued to chip away at protections. As a result, plaintiffs now must prove that age was a determinative, “but-for” cause of their employers’ adverse treatment of them.

**ACTION REQUESTED:** Adopt provisions such as those outlined in the Protecting Older Workers Against Age Discrimination (POWADA) of the 116<sup>th</sup> Congress<sup>4</sup> which would return the level of proof to a pre-*Gross* standard to make proving age discrimination easier. POWADA would also amend the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 provision on retaliation, the Americans with Disabilities Act, and the Rehabilitation Act of 1973. Reforms should also be made during the hiring process to prevent age discrimination.

## **Help Insolvent Multiemployer Pension Plans to Pay Retirement Benefits, Help Protect Pensions and Benefits in Companies Going Through Bankruptcy**

**SUMMARY:** Over 10 million workers and retirees have earned benefits under multiemployer pension plans. Most of these plans are adequately funded; however, plans covering more than one million retirees are struggling financially and expected to run out of funds soon. The retirees belonging to these plans include food industry workers, truck drivers, warehouse workers, musicians, and ironworkers. Their labor helped build America and the work they contributed was essential to keep the nation going. Many performed these jobs tirelessly for decades, forgoing higher wages during collective bargaining in exchange for a secure pension at retirement. This looming crisis faced by some multiemployer plans has been exacerbated by the pandemic’s impact on the economy.

**ACTION REQUESTED:** We urge Congress to protect the hard-earned pensions of our nation’s retirees in financially distressed multiemployer plans by passing the Butch Lewis Emergency Pension Plan Relief Act of 2021. Please protect Congressional authority to set Pension Benefit Guaranty Corporation (PBGC) premiums as well as work to take them off budget. If premiums are not counted as general fund revenue for budget scoring purposes, lawmakers will not raise them to pay for unrelated spending. We also urge Congress to improve pension and retirement plan protections for workers, retirees, and their families whose companies have filed for bankruptcy so they will receive the benefits they are entitled to and counting on.

## **Provide family caregiver tax credits**

**SUMMARY:** Family caregivers put their financial security on the line to tend to their loved ones. There are about 53 million caregivers who provide meals, transportation, nursing,

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<sup>3</sup> 557 U.S. 167 (2009)

<sup>4</sup> S. 485/H.R. 1230, 116th Congress

companionship, and housekeeping so family members can stay in their communities.<sup>5</sup> These caregivers often take on the job without adequate and affordable support. Even with affordable services, the economic effects of caring for a family member can result in financial stress. Most commonly, 28 percent have stopped saving and 23 percent have taken on more debt.<sup>6</sup> The financial strain can last well into the future, especially if caregiving lasts a long time. For women, the economic impact is stark — the estimated impact of caregiving on lost wages because of leaving the workforce early is \$142,693.<sup>7</sup> Adding to that, the estimate for lost Social Security benefits is \$131,351, while the estimated impact on pensions is approximately \$50,000 in lost benefits.<sup>8</sup>

**ACTION REQUESTED:** LCAO urges Congress to pass provisions such as those contained in the 116<sup>th</sup> Congress’s Credit for Caring Act to provide a tax credit to family caregivers.<sup>9</sup> It would provide as much as a \$3,000 non-refundable tax credit (adjusted for inflation) for those who have caregiving expenses of at least \$2,000. The modest tax credit would bring relief for a family member caring for a recipient who has been certified by a health care practitioner to need long-term care for at least 180 consecutive days. The credit would phase out when income exceeds \$150,000 for joint filers or \$75,000 for individual filers.

Finally, LCAO urges you to include the priorities in the [August 5, 2020 letter](#) we sent to you in the pandemic relief legislation you consider.

Thank you for considering these recommendations to serve and protect older Americans.

Sincerely,



Chair

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<sup>5</sup> The National Alliance for Caregiving (NAC) and AARP present *Caregiving in the U.S. 2020*, p.4

<sup>6</sup> Ibid. p.7

<sup>7</sup> Ibid. p.7

<sup>8</sup> The MetLife Study of Caregiving Costs to Working Caregivers Double Jeopardy for Baby Boomers Caring for Their Parents, June 2011, p. 2.

<sup>9</sup> S. 1443, H.R. 2730