March 18, 2020

The Honorable Charles Grassley, Chairman
Senate Committee on Finance

The Honorable Ron Wyden, Ranking Member
Senate Committee on Finance

The Honorable Lamar Alexander, Chairman
Senate Health, Education, Labor and Pensions Committee

The Honorable Patty Murray, Ranking Member
Senate Health, Education Labor and Pensions Committee

The Honorable Frank Pallone, Chairman
House Energy and Commerce Committee

The Honorable Greg Walden, Ranking Member
House Energy and Commerce Committee

The Honorable Richard Neal, Chairman
House Ways and Means Committee

The Honorable Kevin Brady, Ranking Member
House Ways and Means Committee

Sent via Email

Dear Chairmen and Ranking Members of the Congressional Health Committees,

The COVID-19 pandemic is an unprecedented event in the history of our nation’s health care and public health systems, and as such will result in an unprecedented and unpredictable strain on the resources of all stakeholders in the United States health care system. The Association for Community Affiliated Plans (ACAP) is a national trade association representing 74 not-for-profit Safety Net Health Plans (SNHP). Collectively, ACAP plans serve more than 20 million people through Medicaid, Medicare, the individual Marketplaces, and other publicly-supported coverage programs, including one-third of all individuals covered in Medicaid managed care. Our mission is to support our member plans’ efforts to improve the health and well-being of people with low incomes and with significant health care needs. After soliciting the input of our members, this letter highlights necessary policy changes that ACAP believes are required to best equip Safety Net Health Plans and our provider networks to best fight COVID-19.

We share our perspectives with Congress on key Medicaid, Medicare, and Marketplace barriers that can be lifted to reduce strain on Safety Net Health Plans as well as the states, providers, communities, families, and individuals they serve during this time of uncertainty.

Although coverage and payment rules differ between these three programs, and while our requests of Congress differ depending on the program, we have heard from member plans that serve all three or that provide coverage to more than one state, consistency is important to reduce burden. Our comments fall under three primary themes:
1. Extending and Sustaining Medicaid, Medicare, and Marketplace Enrollment, Coverage, and Benefits.

2. Reducing Administrative Burden for Safety Net Health Plans and Other Health Care Stakeholders.


The following recommendations to Congress are subdivided by program area.

**Medicaid and CHIP Policy**

**Access to Stable Medicaid Coverage for All Medicaid and CHIP Enrollees.** We wholeheartedly applaud the House of Representatives for passing H.R. 6201, the Families First Coronavirus Response Act. In particular, we appreciate section 6008, paragraph (b)(3), which requires states to maintain continuous eligibility for people with Medicaid coverage through the end of the emergency. This provision, if similarly passed by the Senate, will provide stable coverage and access to care throughout the current crisis and as treatments and a vaccine are developed and deployed.

- ACAP urges the Senate to join the House of Representatives in requiring states to implement a continuous eligibility requirement in Medicaid and CHIP throughout the full lifespan of the pandemic, and pass H.R. 6201 immediately.

**Increase Federal Medical Assistance Percentage (FMAP) to States.** We applaud the House of Representatives for passing a 6.2 percent Medicaid FMAP bump as part of H.R. 6201. We believe that all Medicaid-covered populations will benefit from this funding increase, but are particularly concerned that states have the resources to care for individuals who require long-term services and supports, who are at heightened risk for complications from COVID-19. To ensure that states have sufficient resources to adequately cover and care for the Medicaid population during this crisis, we call on the Senate to take similar, swift action on increasing funding to states to address the COVID-19 pandemic.

- ACAP urges the Senate to join the House of Representatives in providing states a 6.2 percent Medicaid FMAP bump, and pass H.R. 6201 immediately.

**Incentivizing Medicaid Expansion in Non-Expansion States.** To date, 14 states have declined to expand the Medicaid program under the Affordable Care Act. Medicaid has been recognized as a key tool in combatting past public health crises, and should be effectively deployed again to provide
coverage to millions of people who desperately need it, including in states that have been slow to expand.

- ACAP encourages Congress to make use of additional FMAP enhancements to encourage these states to expand coverage to the 4.4 million uninsured who would be eligible.

**Appropriate Resourcing for COVID-19 Prevention, Testing and Treatment.** Medicaid health plans are committed to the health of their enrollees and have, along with much of the payer community, pledged to provide coverage for coronavirus testing without cost sharing. To effectively pay providers and cover claims, health plans rely on federal regulations requiring states to set rates in an actuarially sound manner. Anticipating that millions of Medicaid and CHIP enrollees will require testing, treatment, and eventual vaccination for COVID-19, ACAP is concerned that a lack of federal oversight and efforts to allow states to waive the requirements for actuarial soundness will undermine plans’ ability to maintain stable provider networks in these challenging times. Congress should ensure CMS conducts strong federal oversight of state Medicaid managed care rate-setting to ensure that health plans can continue to deliver benefits. This will be particularly important if there are mid-year rate adjustments to address the sudden onslaught of COVID-19 cases.

In addition, we are mindful that development of a COVID-19 vaccine is many months in the future, but are also aware that coverage for vaccines is not mandated for all Medicaid populations. To protect all beneficiaries, Congress must ensure that all appropriate vaccines are covered for all populations, including enrollees in Medicaid managed care.

- ACAP urges Congress to require strong CMS oversight of Medicaid managed care rate-setting to ensure that all plans receive rates from states that are actuarially sound, specifically with regard to services related COVID-19.
- ACAP urges Congress to 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.
- ACAP urges Congress to require CMS to provide guidance regarding mid-year Medicaid managed care rate adjustments to account for costs related to COVID-19.

**Institute a Moratorium on the Medicaid Fiscal Accountability Regulation (MFAR).** Given the unprecedented magnitude and nature of the challenges that will be presented to Medicaid programs in combatting the COVID-19 pandemic, ACAP has deep concerns that recent regulatory activity from CMS will undermine many mechanisms that states currently use to adequately fund their Medicaid programs at exactly the time those resources will be needed to fight this pandemic. Notably, the MFAR proposed rule issued by CMS last year will strip many states of essential resources in our time of national health crisis. In ACAP’s [comment letter](#) to CMS dated
January 31, 2020, we expressed our concern that the proposed MFAR undermines state flexibility, reduces Medicaid funding, and reduces access to necessary services, leaving the program and its beneficiaries in jeopardy. ACAP also registered our alarm at CMS's assertion in the rule’s preamble that the “fiscal impact on the Medicaid program from the implementation of the policies in the proposed rule is unknown.” We believe that this is the wrong time to move forward with regulation that will remove needed resources from state health care systems.

- ACAP urges Congress to prohibit the implementation of the Medicaid Fiscal Accountability proposed rule (CMS-2393-P) until the COVID-19 crisis is over and states have had an opportunity to financially recover from the economic damage caused by the pandemic.

Assure Mandatory Non-Emergency Medical Transportation (NEMT). The federal government, state Medicaid programs, Medicaid health plans, providers, and all other health care stakeholders are working collectively to ensure that barriers to testing and treatment for COVID-19 are eradicated. As CMS and states consider flexibilities in provision of Medicaid benefits to enrollees, ACAP urges Congress to remember that transportation is often a foundational barrier to care for people with low incomes. As the COVID-19 pandemic progresses, this key benefit must be protected. Existing bills in both the House and Senate would clarify NEMT as a mandatory benefit under Medicaid law.

- ACAP urges Congress to include the Protecting Patients Transportation to Care Act (H.R. 3935/ S. 2846) in COVID-19 stimulus legislation.

Medicare and Managed Long-Term Services and Supports Policy

Cover the Increased, Unanticipated Medicare Advantage and Medicare-Medicaid Plan Costs Associated with COVID-19. Access to COVID-19 testing and treatment is vital for Medicare beneficiaries. Unfortunately, COVID-19 may result in increased laboratory and imaging tests, emergency room visits, hospitalizations, longer lengths of hospital stays, hospital quarantines, and use of durable medical equipment (DME) which were not accounted for when the 2020 rates were set. For the drug benefit, CMS is encouraging Part D plans to relax “refill too soon” edits and provide maximum extended day supplies of Part D drugs. These steps will help Medicare beneficiaries avoid disruptions in access to drugs due to COVID-19-related quarantines or drug shortages. However, these changes will also increase plan spending on Part D drugs. None of these additional Medicare costs due to COVID-19 were factored into the CY 2020 base rates or risk-adjusted payments to MA-PDs. Depending on the scale of the pandemic, these costs could be significant. D-SNPs and MMPs for full benefit duals that are operated by smaller, safety net health plans could be particularly affected. Covering the increased Medicare costs from COVID-19 during the CY 2020 rate year will avoid negative financial impacts on these plans.
• ACAP urges Congress to direct CMS to adjust MA-PD base rates and/or risk-adjusted payments to MA plans, including D-SNPs, and MMPs to account for the increased and unanticipated costs associated with COVID-19.

Include COVID-19 Under the “Extreme and Uncontrollable Circumstances Policy” for the CY 2021 Star Ratings. CMS’ “Extreme and Uncontrollable Circumstances” Policy is a way to adjust MA plans’ Star Ratings for circumstances which negatively affect Medicare beneficiaries as well as the underlying clinical and operational systems that produce data for quality measurement. As a pandemic, COVID-19 should be considered an extreme and uncontrollable circumstance, and the Star Ratings of affected plans should be adjusted accordingly.

• ACAP urges Congress to direct CMS to include the COVID-19 pandemic under the “Extreme and Uncontrollable Circumstances” policy for CY 2021 Star Ratings for affected plans.

Suspension of Audits. Earlier this month, CMS announced the suspension of non-emergency inspections of health care facilities and laboratories, to let inspectors focus on infection control and safety issues. CMS should similarly suspend all health plan-related audits, including risk-adjustment data validation (RADV) audits for Medicare Advantage (MA) plans, including Dual-eligible Special Needs Plans (D-SNPs), for the rest of 2020 to enable plans to divert their resources from RADV to COVID-19.

• ACAP urges Congress to direct CMS to suspend all MA-PD audits, including RADV audits during the COVID-19 pandemic.

Permit D-SNPs and Medicare-Medicaid Plans (MMPs) to Substitute Face-to-Face Care Coordination Activities with Telephonic or Telehealth Care Management. Care coordination activities are essential, particularly during the COVID-19 pandemic. However, face-to-face care coordination activities place beneficiaries and health plan staff at risk for exposure to COVID-19. Similar to the flexibility CMS is providing MMPs in South Carolina and other states, all D-SNPs and MMPs should be allowed to substitute face-to-face care coordination activities with telephonic or telehealth care coordination, and should be reimbursed for the telephonic or telehealth care coordination activities.

• ACAP urges Congress to direct CMS to permit D-SNPs and MMPs to substitute face-to-face care coordination activities with telephonic or telehealth care management.

Regulatory Relief on Medicaid LTSS Requirements. States should be given flexibility to alter requirements of MLTSS plans in order to ensure continuity of care for LTSS beneficiaries and protect the LTSS workforce. One area where flexibility is needed, for example, is with member assessments.
Individuals are assessed, and subsequently reassessed, for whether they qualify for long-term care services and supports, including nursing home care and home and community-based services. The timing and frequency of these assessments differ by state, but many assessments rely on in-person interviews. ACAP’s MLTSS plans are concerned that the LTSS workforce that conduct these assessments are at increased risk of exposure to COVID-19. Allowing states to permit telephonic, rather than in-person assessments will reduce beneficiaries’ and the LTSS workforce’s exposure to the virus.

Requirements on LTSS beneficiaries is another area where flexibility is needed at this time. For example, some MLTSS enrollees are afraid to go to their doctor’s office for medical examinations that are needed to maintain their LTSS benefits. Other beneficiaries are refusing to allow personal care workers to enter their home out of fear of the virus. Some MLTSS plans are required to disenroll members who do not receive a medical examination within a specified timeframe or who place services on hold for 30 days. In instances such as these, states should be permitted to change MLTSS regulations to ensure continuity of care and to enable greater use of telehealth for MLTSS enrollees.

- ACAP urges Congress to encourage CMS to work with states to quickly permit regulatory relief, particularly with respect to substituting telehealth for in-person assessments, timing of assessments, and eligibility requirements.

**Individual Market Policy**

**Federal Special Enrollment Period (SEP).** Media accounts are starting to document consumer fears of presenting for COVID testing and treatment by those who are uninsured or underinsured. We believe it’s important for all consumers to have health insurance coverage, and while we realize that it is past open enrollment, we note that several state-based marketplaces have instituted special enrollment periods (SEPs) and believe that there could similarly be a role for a federal SEP. However, we also recognize that providing a SEP could be opening the door to impactful changes to the risk pool or SEP abuse. CMS has previously acknowledged this issue by instituting an adjustment factor for partial-year enrollees in the risk adjustment formula and we would urge CMS to ensure that such an adjustment factor is weighted appropriately if a new SEP is instituted mid-year. Additionally, we support a federal SEP, so long as it is prospective, open to ALL consumers (not just those who have tested positive for COVID-19), and is coupled with additional federal funding to plans that are overwhelmed by unanticipated costs associated with consumers newly enrolling through the SEP. This could be accomplished by tracking costs associated with newly enrolled consumers, instituting a federal reinsurance program, or by directing funding to plans whose medical loss ratios ultimately reach an established threshold.
• ACAP urges Congress to establish a federal, prospective SEP that is coupled with a federal backstop to ensure that issuers do not face overwhelming, unanticipated costs associated with new, mid-year enrollment.

Limit Short-Term, Limited-Duration Insurance. As with the federal SEP discussed above, ACAP believes that comprehensive health care coverage is of vital importance—especially during recessions and times of economic need. For example, it is one reason that the counter-cyclical nature of the Medicaid program has played such a vital role during times of emergency. While ACAP’s objection to short-term, limited-duration insurance is well-documented, we believe that its shortcomings will only serve to exacerbate the public health crisis we are facing. Specifically, consumers with such plans have expressed concern about getting COVID-19 testing or treatment, and those who do present for testing and treatment can expect to receive significant surprise medical bills given that STLDI plans often do not have true provider networks. Given the limited benefits and coverage generally offered by STLDI plans, consumers with such plans will quickly discover that they are left essentially without coverage. Accordingly, we urge Congress and the Administration to limit STLDI insurance to both align with its true intent—as short-term insurance to fill gaps in coverage, rather than as an alternative form of primary coverage, and to issue a moratorium on such plans during this time of emergency. We urge a return to the 2016 CMS regulatory definition in an expeditious manner while at the same time establishing a temporary moratorium on such plans altogether or requiring that such plans provide benefits and coverage for COVID testing and treatment equivalent to that provided by QHPs. In order to minimize impact on consumers whose short-term plans would be terminated, we urge CMS and Congress to consider a concurrent special enrollment period (such as above) to permit consumers to purchase comprehensive coverage.

• ACAP urges CMS to issue a temporary moratorium on STLDI plans altogether and enact a concurrent SEP to ensure that consumers are able to access comprehensive coverage and care. CMS should further act to restore such plans to their intended use of filling gaps in coverage.

Overarching Policy

Delay Interoperability Rule, Plus Provide Funding to States and Health Plans for Interoperability Implementation. ACAP submitted comments to CMS and the Office of the National Coordinator for Health Information Technology within the Department of Health and Human Services (HHS) in response to the “interoperability” rules introduced in 2019. Despite our concerns—and that of many stakeholders—that adhering to HHS’s proposed implementation dates would impede successful adoption and create significant risks for plans and members, HHS finalized the rule with only minor amendments to the timeframes.
Even prior to the advent of the COVID-19 pandemic, we did not believe the standards finalized in the rule were ready for adoption. Furthermore, we harbor grave worries that states and plans are not sufficiently prepared to fund the substantial and complex changes required by the rule. Given the magnitude of the resources required to combat the COVID-19 crisis, we strongly urge Congress to work with CMS to delay implementation until all required stakeholders are better able and better resourced to make the complex changes in the rule.

- ACAP urges Congress to delay implementation of the interoperability rule.
- In addition, ACAP urges Congress to provide funding to states and health plans to implement the rule.

Please contact me (mmurray@communityplans.net, 202-204-7509) or Jennifer McGuigan Babcock for Medicaid policy (jbabcock@communityplans.net), Christine Lynch for Medicare policy (clynch@communityplans.net), and Heather Foster for Marketplace policy (hfoster@communityplans.net), if you would like to discuss these issues in greater depth.

Sincerely,

/s/

Margaret A. Murray
Chief Executive Officer