April 29, 2020

The Honorable Nancy Pelosi, Speaker
Speaker, U.S. House of Representatives
The Honorable Kevin McCarthy
Republican Leader, U.S. House of Representatives

The Honorable Mitch McConnell
Majority Leader, United States Senate
The Honorable Charles Schumer
Democratic Leader, United States Senate

Sent via Email

Madam Speaker, Majority Leader McConnell, Representative McCarthy and Senator Schumer,

As the United States enters our fourth month of the COVID-19 crisis, the pandemic continues to put tremendous strain on the resources of all health care stakeholders. With this letter, ACAP offers our perspectives on Medicaid, Medicare, and Marketplace priorities for consideration in future Congressional action.

The Association for Community Affiliated Plans (ACAP) is a national trade association representing 75 not-for-profit Safety Net Health Plans (SNHPs). Collectively, ACAP plans serve more than 20 million people through Medicaid, Medicare, the individual Marketplaces, and other publicly-supported coverage programs, including nearly 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.

Since the Administration first declared a national emergency, 54 ACAP Safety Net Health Plans signed a commitment to waive all deductibles, coinsurance, and copayments for diagnosis and medically-necessary acute treatment of COVID-19 consistent with CDC guidance; waive prior authorization requirements for diagnostic tests and medically-necessary acute covered services related to COVID-19; waive early medication refill limits on prescriptions; and protect health care providers and patients by supporting efforts to move provider visits to a telehealth setting. Individual Safety Net Health Plans have also made numerous contributions to the health and well-being of their communities:

- **Giving support to providers**: Plans have provided direct financial support, secured personal protective equipment, provided accelerated payments and helped transition providers to capitation payments.

- **Easing access to care**: ACAP plans have expanded telemedicine offerings, installed 24/7 hotlines to connect patients to medical professionals for advice, and provided basic information to help consumers make informed decisions.
- **Supporting their communities.** ACAP-member plans have, to date, donated tens of millions in funding to area food banks, charities and others to support the fight against COVID.

**ACAP thanks Congress for enacting important policies.**

In particular, we are thankful that Congress enacted strong Maintenance of Effort (MOE) requirements, including continuous eligibility, for Medicaid enrollees. When Congress enacted the 6.2 percent FMAP increase in the Families First Coronavirus Response Act, it conditioned these funds on state adherence to several requirements: states are prohibited from increasing premiums for individuals covered by Medicaid; states may not implement more stringent eligibility policies than were in place January 1, 2020; and states may not disenroll Medicaid enrollees during the pandemic. ACAP thanks Congress in particular for requiring continuous eligibility for people on Medicaid, which will ensure consistent coverage and access to care while the crisis continues and urges Congress to resist any effort to repeal or undermine these important protections.

We are also grateful to Congress for aligning privacy rules at 42 CFR Part 2 with HIPAA. The Senate CARES Act amended rules at 42 CFR Part 2 that govern how patient substance use disorder treatment records are protected. In support of effective treatment and care coordination for substance use disorder, and in particular to ensure patient safety, ACAP has long advocated for aligning 42 CFR Part 2 with HIPAA. We applaud Congress’ leadership in making this change.

Looking ahead, ACAP urges Congress to include the following important policy changes in upcoming phases of COVID-19 response legislation, subdivided by program area.

**Medicaid and CHIP Policy**

**Appropriate and Accurate Rate-setting for COVID-19 Prevention, Testing and Treatment.** Medicaid health plans are committed to the health of their enrollees and the strength of the providers in their networks. 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 by some states to seek a waiver of federal requirements for actuarial soundness will undermine plans’ ability to maintain stable provider networks in these challenging times. Congress must insist that and provide strong oversight as CMS reviews 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 to sudden onslaught of COVID-19 cases.

- 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 sufficient to maintain provider payments and the delivery of benefits, specifically with regard to all services related COVID-19.
• ACAP urges Congress to prevent CMS from waiving 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 issue guidance regarding mid-year Medicaid managed care rate adjustments to account for costs related to COVID-19.

Increase FMAP Bump to 12 Percent. ACAP was strongly supportive of previous Congressional action to temporarily increase FMAP by 6.2 percent; echoing the National Governors Association’s request, we now call on Congress to increase this assistance to 12 percent. This additional support will help states provide Medicaid coverage to the millions of individuals already enrolled, plus the tens of millions of Americans who are losing employment and private coverage due to the pandemic and who are expected to seek Medicaid coverage in the next months. There is precedent for such an increase in the 2009 Recovery Act.

• ACAP urges Congress to increase the FMAP bump enacted in the Families First Coronavirus Response Act to 12 percent.

Protect the FMAP MOE Requirements. Since being enacted, the MOE requirements in section 6008(b) of the Families First Act have been under steady attack, and one of the requirements – requiring continuous eligibility – was nearly reversed during debate on the CARES Act. The consequences of individuals of losing – or not having – health care coverage during the pandemic would necessarily be dire. Therefore, it is of critical importance, then, that Congress maintain these provisions.

• ACAP strongly urges Congress to reject any effort to undermine the MOE requirements in section 6008(b) of the Families First Coronavirus Response Act.

Apply the FMAP Continuous Eligibility MOE Requirement to Children’s Health Insurance Programs (CHIP). Section 6008(b)(3) of the Families First Coronavirus Response Act explicitly prohibits states accepting the 6.2 percent FMAP increase from disenrolling Medicaid enrollees until the end of the emergency period. Currently, this requirement excludes children and pregnant women covered in separate CHIP programs. To ensure that all health care consumers with low incomes retain access to critical health care and coverage, we urge Congress to extend this protection to all CHIP enrollees.

• ACAP asks Congress to apply the MOE requirement in section 6008(b)(3) to all CHIP enrollees.

Increase FMAP to Non-Expansion States. ACAP believes that states that implemented the Affordable Care Act Medicaid expansion after 2014 should benefit from the same enhanced FMAP schedule available to states that expanded in 2014, and asks Congress to provide non-expansion states with this financial incentive.

• ACAP strongly supports providing enhanced FMAP to encourage states to expand Medicaid coverage.
Delay the CHIP Funding Cliff by One Year. The E-FMAP bump of 23 percentage points enacted in 2018 as part of the CHIP funding extension is scheduled to be eliminated over two years, starting in 2020. This funding decrease continues with an 11.5 percentage point decline in FY 2021. To ensure that states have sufficient funding to continue to provide coverage to children who receive coverage through CHIP, Congress should postpone the 2021 funding decrease by one year.

- ACAP urges Congress to delay the 2021 E-FMAP reduction until 2022.

Address Countercyclical Funding for Medicaid. ACAP supports an automatic increase in federal Medicaid funding to states in times of economic downturn, represented by an increase in a state’s unemployment rate. Medicaid has long been recognized as counter-responsive to the economy, covering more individuals and imposing significant budgetary pressures just as states experience economic slowdowns.

- ACAP strongly supports passage an automatic FMAP increase to address economic downturns.

Institute a Moratorium on the Medicaid Fiscal Accountability Regulation (MFAR). ACAP asks Congress to prohibit the Secretary of HHS from finalizing the MFAR until two years after the end of the COVID-19 pandemic. Given the potential magnitude of federal funding cuts that would result from an implemented MFAR, ACAP has consistently asked Congress to require CMS to delay implementation of the MFAR until the pandemic is over. Additionally, ACAP’s regulation comment letter to CMS dated January 31, 2020 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 strongly urges Congress to prohibit implementation of the Medicaid Fiscal Accountability proposed rule until the COVID-19 crisis is over.

Pause Medicaid Provisions in the Public Charge Regulation for, at a Minimum, the Duration of the COVID-19 Public Health Emergency. Concerns and confusion over enforcement of the public charge regulation encourages disenrollment from Medicaid during a time when access to testing, treatment, and care is critical and in the best interests of public health. ACAP has consistently asked that the public charge rule be withdrawn; with this letter, we at a minimum encourage Congress to pause the Medicaid-related provisions of the public charge regulation.

- ACAP urges Congress to place a moratorium on the public charge regulation for the duration of the pandemic.

Provide Medicaid Coverage for Citizens of Freely Associated States. ACAP supports restoration of Medicaid eligibility to citizens of Freely Associated States residing in the United States. Since the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) was enacted, these individuals who are welcome to travel to, live, and work in the United States have been denied access to the Medicaid program.
ACAP urges Congress to allow citizens of Freely Associated States residing in the United States to enroll in Medicaid.

**Medicare and Managed Long-Term Services and Supports Policy**

**Cover the Increased, Unanticipated Medicare Advantage 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. Depending on the scale of the pandemic, these costs could be significant. D-SNPs for full benefit duals that are operated by smaller, Safety Net Health Plans could be particularly affected. Moreover, while utilization is decreasing for some preventive and routine health care services due to the pandemic, we anticipate a surge in utilization and spending in Medicare services at the end of the public health emergency due to delays in care and unmet need.

- ACAP strongly supports the inclusion of risk corridors for MA plans.

**Ensure Personal Care Attendant (PCA) and Home Health Aides access to PPE.** PCAs and home health aides work in Medicare and Medicaid beneficiaries’ homes to assist with activities of daily living, such as dressing, cooking, walking, and bathing. Without PCAs and home health aides, many beneficiaries would be unable to safely live in their communities, and instead would have to live in a nursing home. PCAs and home health aides are part of the health care workforce, however they have not been prioritized for access to PPE, placing them and the beneficiaries they serve at risk of contracting COVID-19.

- ACAP strongly urges Congress to work with FEMA, CMS, and states to ensure that personal care attendants and home health aides have access to appropriate PPE.

**Individual Market Policy**

**Provide Federal Special Enrollment Period (SEP).** In previous letters to CMS and Congress, we have urged the creation of a federal Special Enrollment Period in order to ensure that all consumers have health insurance coverage. Any SEP should be prospective, open to ALL consumers (not just those who have tested positive for COVID-19), and is coupled with additional federal funding or risk mitigation to plans that are overwhelmed by unanticipated costs associated with consumers newly enrolling through the SEP.

While we recognize the funds set aside for the uninsured in the CARES Act, we are also aware that such funds will not be sufficient for addressing the full medical needs of consumers presenting with COVID or COVID-like symptoms. Media accounts are starting to document consumer fears of presenting for COVID testing and treatment by those who are uninsured or underinsured. Likewise, while many consumers that have recently lost job-based coverage will already be eligible for a regular SEP, we believe that a new federal SEP, similar to that instituted by many states so far, would be a valuable tool in lessening the impact of COVID-19 on consumers, providers, and our nation’s health care infrastructure. Scholars at
the right-leaning American Enterprise Institute and those at left-leaning advocacy organizations have all urged the creation of a federal SEP to mitigate the spread of COVID across our nation and ensure adequate hospital capacity for those who need it most.

We urge Congress to use the definition of the uninsured used in section 3716 of the CARES Act to define who may qualify for a new SEP that is open to all consumers without ACA-compliant health insurance, in order to ensure that consumers duped by the false promises of short-term, limited-duration insurance are also eligible to purchase comprehensive coverage if they so desire.

• ACAP supports establishing a new 2-month SEP for all uninsured Americans that would otherwise be eligible to purchase ACA coverage during open enrollment—not just those traditionally eligible for a SEP due to loss of job-based coverage. We believe this is particularly important for consumers that have been deceived by the false promises of short-term, limited-duration insurance and are quickly realizing the need for comprehensive coverage.

COVID Treatment Fund. The Administration has stated that rather than open a new SEP, uninsured consumers will be covered through the new Public Health and Social Services Emergency Fund established in the CARES Act, which will ensure that uninsured consumers are able to access needed treatment and that providers are able to receive compensation for services rendered. However, the Administration has at the same time stated that consumers who have purchased short-term, limited duration insurance will not be considered uninsured for purposes of the emergency fund. Congress specifically defined uninsurance in Section 6004 of the Families First Act and Section 3617 of the CARES Act to include such individuals for purposes of COVID testing. The Emergency Fund, however, directs money to providers, simply saying that: “that these funds may not be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.” Notably, this language does not overtly specify that all uninsured consumers will be covered — and HHS recently announced that such funds will not be available to cover consumers with short-term, limited-duration insurance.

STLDI customers whose claims are rejected (due to having a pre-existing condition or one of any other myriad of reasons an STLDI plan could deny coverage) will be left on the hook — both unable to purchase comprehensive coverage through an SEP and uncovered by the Emergency Fund. We urge Congress to clarify that those enrolled in short term, limited duration insurance plans will not be at risk financially from COVID-related treatment by requiring the definition of the uninsured in Section 3617 of the CARES Act applies to the Public Health and Social Services Emergency Fund, or to otherwise protect consumers such as by requiring that STLDI plans explicitly be required to cover COVID treatment.

• ACAP urges Congress to clarify that the Public Health and Social Services Emergency Fund can be used to cover expenses of associated with treatment of all individuals defined as uninsured in Section 3617 of the CARES Act or otherwise protect consumers and providers by requiring that STLDI plans cover COVID treatment.
Risk Mitigation Program. We recognize that there will be an unknown impact on plans, whether from partial-year enrollees who have joined through an SEP (even a regular, loss-of-coverage SEP rather than a new, federal SEP) or from the costs of dealing with the pandemic. Accordingly, it is vital that some form of risk mitigation program be in place to serve as a backstop to potentially overwhelming losses, if needed. For example, if plans exceed a defined medical loss ratio (MLR), federal funds could be made available to them. Or, either a one-sided risk corridor or federal reinsurance program could serve as an appropriate risk mitigation backstop to prevent massive, catastrophic losses.

- ACAP also urges Congress to establish a risk mitigation program to function as a backstop and ensure that issuers do not face overwhelming, unanticipated costs associated with COVID-19 testing and treatment, including unexpected costs associated with consumers purchasing coverage mid-year.

Limit Short-Term, Limited-Duration Insurance. As evidenced by our support for a federal SEP as 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 the Administration to limit STLDI 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, at minimum, 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 to consider a concurrent special enrollment period (such as above) to permit consumers to purchase comprehensive coverage.

- ACAP urges Congress to issue a temporary moratorium on STLDI plans, reverse the 2018 rule, and enact a concurrent SEP to ensure that consumers are able to access comprehensive coverage and care.

Coverage Terminations. The economic impact of this pandemic is well-documented, from decreased revenues for individuals working in the “gig economy” to staggering unemployment numbers. While CMS has issued guidance on how issuers may delay the grace period, many consumers may still lose their coverage due to mandatory, statutory coverage termination requirements for nonpayment of premiums. We urge Congress to permit issuers to reinstate coverage for consumers who lose their coverage during the pandemic because of nonpayment of premiums. We do not believe that consumers impacted by job losses during this trying time should be further punished by the loss of their health coverage if they are able to start paying premiums again later in the year.
• We urge Congress to permit issuers to reinstate QHP coverage for consumers whose coverage has been terminated due to non-payment of premiums.

**Improve Affordability.** Finally, ACAP urges Congress to improve affordability for consumers by reducing the premium affordability percentage by which premium tax credits are determined. ACAP has long supported improved affordability for consumers and believes it is ever more important during times of crisis, when consumers will be hard-hit to make difficult choices between health care, rent, food, and other essential items.

• ACAP supports Division T, Title I, Section 104 of the Take Responsibility for Workers and Families Act, which would improve affordability of ACA-compliant plans for consumers.

ACAP fully recognizes that the COVID-19 crisis will not come to an end in the United States until testing is widely available and a vaccine is developed and accessible to everyone in our nation. Although this is not the focus of our letter, we support any effort to provide all necessary resources to the scientific and medical communities to ensure that these steps are taken as quickly as possible. In addition, we harbor substantial concerns that the long-term impacts on the economy and the health care system will be felt for years after the emergency period has ended. Therefore, we must all begin to consider the long-term benefits of changes enacted by Congress as integral to a stronger health care system and the well-being of the American people.

Thank you for giving us the opportunity to provide input on these critical policy changes. 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