

March 15, 2019

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives

The Honorable Frank Pallone
Chairman
House Energy and Commerce Committee

The Honorable Greg Walden
Ranking Member
House Energy and Commerce Committee

Subject: Extend Medicaid’s HCBS Spousal Impoverishment Protection before it Expires March 31 & Reauthorize Money Follows the Person

Dear Leader Pelosi, Minority Leader McCarthy, Chairman Pallone, and Ranking Member Walden:

We, the undersigned 60 organizations—members of the Leadership Council of Aging Organizations (LCAO), the Consortium for Citizens with Disabilities (CCD), and allies—are writing to urge you to pass legislation to extend vital financial protections for married couples when one spouse requires long-term services and supports (LTSS) available through Medicaid home and community-based services (HCBS) *before they expire on March 31, 2019*. In addition to the potential harms to persons with disabilities and older adults that could occur if this protection expires, we also anticipate immediate disruption, confusion, and new administrative burdens on states.

Medicaid’s “spousal impoverishment protections” make it possible for an individual who needs a nursing home level of care to qualify for Medicaid while allowing their spouse to retain a modest amount of income and resources. Since 1988, federal Medicaid law has required states to apply these protections to spouses of individuals receiving institutional LTSS. This has helped ensure that the spouse who is not receiving LTSS can continue to pay for rent, food, and medication while the other spouse receives their needed care in a facility. Congress extended this protection to eligibility for HCBS in all states beginning in 2014, so that married couples have the same financial protections whether care is provided in a facility or in the community.

This common-sense policy ensures that families can stay together when dealing with the struggles that come with caring for loved ones with disabilities and conditions such as dementia, multiple sclerosis, or traumatic brain injury. It has benefitted real people such as Mr. and Mrs. Hernandez,¹ who have been married for 53 years. Both spouses can live safely at their home in California if they receive HCBS through Medicaid. Previously, the couple could not access full Medicaid services due to an unaffordable monthly share of cost. But when their eligibility was redetermined based on the expanded spousal impoverishment protection, they both qualified for Medicaid HCBS. Now Mr. Hernandez, who has survived three strokes, and Mrs. Hernandez, who has cancer, are both able to get the services they need at home while retaining the income necessary to pay for food and rent. If the protection expires, they are at risk of losing Medicaid eligibility again unless they enter a nursing facility.

¹ The spouses’ names have been changed to protect their privacy.

Allowing the extension of the spousal impoverishment protection for HCBS to expire will also impose an immediate burden on states. The Centers for Medicare & Medicaid Services has issued guidance² on the sunset of the spousal impoverishment rules that directs states to stop applying these protections immediately at the start of April 2019 and redetermine Medicaid financial eligibility for all individuals receiving HCBS to whom the protection would no longer apply. In a recent analysis, the Kaiser Family Foundation concluded that extending the protection “would provide stability and continuity for enrollees receiving HCBS and for states administering Medicaid eligibility determinations and renewals.”³ On the other hand, if Congress does not act to maintain this protection for all HCBS recipients, states could discontinue applying it to some or all HCBS recipients, which “could affect states’ progress in expanding access to HCBS, rebalancing LTSS spending, and promoting community integration.”⁴

We are deeply thankful to Representatives Debbie Dingell (D-MI) and Fred Upton (R-MI) for introducing H.R. 1343, *the Protecting Married Seniors from Impoverishment Act*, to permanently extend these protections to HCBS. We understand passing a permanent fix may take time. However, allowing the policy to expire now could force people like the Hernandez family, whose needs warrant a nursing facility level of care but now receive such care in their homes, into more costly institutional care against their wishes. Further, letting these protections expire could stall or even reverse progress states have made in helping older adults and people with disabilities remain at home and in the community.

We also urge you to support the bipartisan, bicameral *EMPOWER Care Act* (S. 548/H.R. 1342) and swiftly reauthorize the Money Follows the Person (MFP) demonstration program, which goes hand-in-hand with the spousal impoverishment protection to ensure older adults and people with disabilities have a meaningful choice to receive Medicaid long-term services and supports in their homes and communities. MFP has helped more than 88,000 older adults and people with disabilities transition out of nursing and other facilities back to living in their communities. MFP has also helped 43 states and the District of Columbia develop the needed infrastructure to enhance people’s access to HCBS, while helping states shift more of their resources to HCBS and reduce expenditures on institutional services. However, states that have run out of funding are transitioning fewer individuals and the progress we have made due to MFP in serving older adults and people with disabilities in their communities is at risk, including key staff layoffs and loss of infrastructure.

While Congress has made great bipartisan strides in ensuring persons with disabilities can be integrated into their communities and that seniors can age in place, systematic biases still exist that favor more costly institutional care over HCBS. Both MFP and protection from spousal

² CMS Informational Bulletin, *Temporary Extension of the Affordable Care Act’s Spousal Impoverishment Provision for Married Recipients of Home and Community-Based Services* (Feb. 8, 2019), <https://www.medicaid.gov/federal-policy-guidance/downloads/cib020819.pdf>.

³ Kaiser Family Foundation, *Potential Changes to Medicaid Long-Term Care Spousal Impoverishment Rules: States’ Plans and Implications for Community Integration* (Feb. 22, 2019), available at www.kff.org/report-section/potential-changes-to-medicaid-long-term-care-spousal-impoverishment-rules-states-plans-and-implications-for-community-integration-issue-brief/.

⁴ *Id.*

impoverishment follow in that proud bipartisan history of passing legislation to ensure older adults and people with disabilities have the option to remain at home and in the community.

For these reasons, we urge you to pass legislation to continue the HCBS spousal impoverishment protection before its expiration on March 31 and reauthorize the Money Follows the Person program. Thank you for your consideration.

Sincerely,

AARP

Alliance for Retired Americans

Allies for Independence

Alzheimer's Association

Alzheimer's Impact Movement

AMDA: The Society for Post Acute and Long Term Care Medicine

American Association of People with Disabilities

American Association on Health and Disability

American Association on Intellectual and Developmental Disabilities

American Geriatrics Society

American Network of Community Options & Resources (ANCOR)

American Psychological Association

American Therapeutic Recreation Association

The Arc of the United States

Association of University Centers on Disabilities (AUCD)

Autism Society of America

Autism Speaks

Autistic Self Advocacy Network

Center for Medicare Advocacy

Center for Public Representation

Coalition on Human Needs

Community Catalyst

Disability Rights Education and Defense Fund (DREDF)

Easterseals

Epilepsy Foundation

Families USA

The Gerontological Society of America

The Jewish Federations of North America

Justice in Aging

Lakeshore Foundation

LeadingAge

Lutheran Services in America

Meals on Wheels America

Medicare Rights Center

National Academy of Elder Law Attorneys

National Adult Day Services Association (NADSA)

National Association for Home Care and Hospice

National Association of Area Agencies on Aging (n4a)
National Association of Councils on Developmental Disabilities
National Association of Long-Term Care Ombudsman Programs
National Association of Nutrition and Aging Services Programs (NANASP)
National Association of Social Workers (NASW)
National Association of State Directors of Developmental Disabilities Services
National Association of State Head Injury Administrators
National Committee to Preserve Social Security and Medicare
National Consumer Voice for Quality Long-Term Care
National Council on Aging
National Council on Independent Living
National Disability Rights Network
National Health Law Program
National Partnership for Women & Families
National Respite Coalition
Paralyzed Veterans of America
PHI
Service Employees International Union
Special Needs Alliance
TASH
Union for Reform Judaism
Well Spouse Association
WISER