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January 14, 2020

Dear Department of Health and Human Services Transition Team:

On behalf of ADvancing States, I am writing to provide recommendations regarding policy and programmatic recommendations for the new administration. ADvancing States is a nonpartisan association of state government agencies that represents the nation's 56 state and territorial agencies on aging and disabilities. We work to support visionary state leadership, the advancement of state systems innovation, and the development of national policies that support home and community-based services for older adults and persons with disabilities. Our members administer a wide range of services and supports for older adults and people with disabilities, including administering the Older Americans Act (OAA) and Medicaid long-term services and supports (LTSS). Together with our members, we work to design, improve, and sustain state systems delivering long-term services and supports for people who are older or have a disability and for their caregivers.

Additional COVID-19 Relief Funding

Background: The pandemic has placed significant strain on state home and community-based (HCBS) systems due to challenges with recruiting and retaining direct-care providers; closure of day settings; increased costs due to purchase of needed protective equipment; and technology to support individuals living at home, and other needed resources. Simultaneously, the rapid spread of COVID in institutional and congregate settings has shown the need for even more aggressive efforts to promote deinstitutionalization than are currently in place. We encourage the Administration to work with Congress to provide support that assists states sustain and enhance their HCBS infrastructure.

We also strongly encourage the Administration to advocate for additional funding for Older Americans Act (OAA) meal programs. In the spring of 2020, Congress

allocated significant resources to OAA Title III-C meals in the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act. In December Congress provided an additional $175 million for OAA meals, which was significantly less than the $750 million contained in earlier drafts of the fall relief legislation and falls well below the estimated need for services around the country.

Recommendations:

1. Medicaid:
   a. Further increase the Medicaid Federal Medical Assistance Percentage (FMAP) to a total of 12%;
   b. Provide targeted support and funding to assist states enhance and sustain their home and community-based services (HCBS) infrastructure; and
   c. Allow states to provide three meals a day through their Medicaid HCBS programs for the duration of the pandemic.
2. Older Americans Act:
   a. Provide at least $1.1 billion in additional funding for the OAA to further support disaster relief efforts; and
   b. Provide maximum flexibility that allows state agencies to deliver individualized disaster relief services.

Communication around Major Disaster Declaration

Background: On January 31, 2020, Secretary Azar declared a public health emergency (PHE) retroactive to January 27th. The PHE provides additional flexibility for Medicaid and OAA service delivery and program management. Similarly, the President can issue a major disaster declaration (MDD) for each state and territory that unlocks Federal Emergency Management Agency resources as well as broader flexibilities in the OAA.

The PHE emergency declaration can last for 90 days, after which it must be renewed to continue. The PHE has already been renewed multiple times, most recently on January 8, 2020.[1] In many cases, there has been little doubt that the situation remains an emergency and

[1] https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx

that the PHE would be extended; however, the actual extension has not been announced until shortly before the expiration of the current declared PHE. States struggle planning for the end or extension of COVID-related flexibilities when there is uncertainty regarding the date of the PHE termination. Similarly, states do not have experience with MDDs that last as long as the COVID-related ones and are uncertain about the factors that could lead to a recission of a state MDD.

Recommendations:

1. Communicate more consistently with states about planned extensions of the PHE and state major disaster declarations to enable better planning for state and local governments;
2. Provide more guidance regarding the length of time that MDDs may be in effect and factors that may lead to the sunset of a state MDD; and
3. Provide no less than 3 months advance notice regarding the potential termination of a MDD in any jurisdiction.

Direct Care Workforce Crisis

Background: Before the COVID-19 crisis, states struggled with securing sufficient workers to provide services for all HCBS participants as well as with significant turnover of individual providers.[2] The pandemic has exacerbated this already challenging dynamic and shed light on the fragility of the HCBS system. Without programs that encourage individuals to serve as providers and provide worker retention efforts, the challenges with provider capacity will continue to increase. A lack of providers to sufficiently serve all individuals living in their own homes could leave congregate settings as the only option for many participants. This would likely lead to many individuals losing the self-determination to choose their own residence and even the reinstitutionalization of individuals previously in the community. The move to increased congregation of LTSS participants would be regressive and contrary to the past half-century of independent living and HCBS expansion activities.

ADvancing States partnered with Centene Corporation to develop ConnectToCareJobs.com, a job matching service for states and LTSS providers. The rollout of this site has been effective

[2] Addressing the Disability Workforce Crisis of the 21st Century, ANCOR, 2017

but is limited in scope due to lack of dedicated funding. Centene donated their time, funding, and expertise to assist with the initial website creation and we have been reallocating existing funds to maintain the website. We do not currently have any dedicated support for the service, and this limits its availability across the country as well as our ability to continue development and improvement of the website. We believe that this tool would be extremely useful if expanded nationwide and provided additional support to continue its upkeep and to implement increased functionality.

Recommendations:

1. Provide additional funding to state Medicaid, aging, and disability agencies to implement workforce recruitment and retention programs;
2. Establish federally funded initiatives aimed at addressing the direct care workforce crisis, including opportunities for better pay and benefits, career ladders, and expanded training; and
3. Provide dedicated funding to support ConnectToCareJobs.com.

Enhancing Broadband Capacity

Background: The social distancing and shelter in place requirements that are necessary to mitigate the spread of COVID-19 have forced many older adults and individuals with disabilities to forego community outings and services in group settings. Many of these HCBS participants, as well as the general population, have turned to the internet to connect with friends and family, engage in work activities, and perform basic life activities such as shopping for food or attending medical appointments. However, many older adults and people with disabilities lag behind individuals without disabilities in internet access and utilization. These disparities are even more prevalent in rural and frontier settings where wired internet may not be available.

The Consolidated Appropriations Act of 2021 establishes a program that assists low-income households and those suffering with job loss pay for internet access. Unfortunately, though there are many people deemed eligible for the program based on receipt of public benefits, such as Medicaid or the Supplemental Nutrition Assistance Program, this may not encompass all older adults and people with disabilities that currently lack internet access. Further, many older adults and people with disabilities may not be aware of the program, may need additional

training or support to establish and use broadband, or may lack income and resources to establish a broadband connection due to anticipated costs in excess of financial support available.

Recommendations - Broadband Assistance Program

1. Provide targeted outreach, education, and enrollment assistance on the new broadband assistance program created but the Consolidated Appropriations Act of 2021;
2. Provide ongoing training and support to assist individuals understand how to access and utilize web-based resources; and
3. Expand eligibility criteria for the broadband benefit services to automatically include individuals receiving OAA services.

Recommendation - Medicaid: Allow states to use Medicaid HCBS funding to subsidize internet access for older adults and people with disabilities.

Social Isolation

Background: Social isolation is known to harm individuals' overall health and wellbeing.[3] Many older adults and individuals with disabilities were already experiencing social isolation prior to the COVID-19 pandemic and the social distancing requirements used to mitigate spread of the disease have exacerbated this problem. ACL recently created the "Commit to Connect" initiative in order to address some of the social isolation occurring around the country,[4] and ADvancing States has catalogued numerous innovative and promising practices to mitigate social isolation.[5] These programs help but do not have the ability to address all causes of isolation or to reach all individuals. A variety of approaches must be made to help combat social isolation among older adults and people with disabilities.

Recommendation: Allow states to create a "social isolation mitigation" service definition that provides flexible interventions to address factors that are isolating older adults and people with disabilities. Enable states to use this service in both OAA and Medicaid HCBS programs.

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[3] https://www.nia.nih.gov/news/social-isolation-loneliness-older-people-pose-health-risks
[4] https://acl.gov/CommitToConnect
[5] http://www.advancingstates.org/sites/nasuad/files/Social%20Isolation%20Resource_10142020.pdf

AGING AND DISABILITY PRIORITIES

Senior Nutrition

Background: State and local aging entities have proven the efficacy of additional flexibility around using Older Americans Act (OAA) Title III-C funds to meet the needs of older Americans during the COVID-19 pandemic. The requirement to keep funds separate and transfer them between Title III-C1 and C2 to meet the state need is administratively burdensome and restricts delivery of person-centered nutrition services.

Recommendation: Support congressional action that allows states and AAAs to have permanent flexibility for the use of their C1 and C2 funds to support their community-specific needs and person-centered nutrition services.

Adult Protective Services

Background: There continues to be a misconception that the Federal Government funds adult protective services (APS) programs across the country. This is not the case. The 2021 Consolidated Appropriations Act provided $50 million for APS, which is the first time that there has been any Federal funding allocated for the operation of APS programs. This is one-time money and is not sufficient to support APS nationwide nor is it sustainable given the time-limited nature of the allocation.

In absence of federal funds, state aging and disability agencies have cobbled together funding from other programs, such as the Social Services Block Grant (SSBG), Medicaid, and private or public discretionary grants. Unfortunately, these funds come with different requirements and restrictions on use that creates fractured administration of APS within and across states.
Cases of abuse, neglect, and exploitation continued to rise across the country leading up to the pandemic. Since the pandemic started, older adults and people with disabilities have not had access to many community-based services that could identify and refer individuals to APS when there is suspected abuse, neglect, and exploitation. Some of these individuals may be quarantined with an abusive family member, spouse, partner, or acquaintance, causing increased risk of harm. Because of the lack of contact with many older adults and people with

disabilities, we still do not know the full effect of millions of Americans being on lockdown at home.

Recommendations:

1. Congress must create a designated funding source and overarching legislative and regulatory structure for APS;
2. ACL should continue to serve as a repository for APS information and provide as much funding and technical assistance as possible to support APS services and infrastructure.

Administration for Community Living's Regional Structure

Background: In 2019 the Administration for Community Living (ACL) initiated and executed a reorganization of its structure and operations. A component of this included restructuring the regional offices and pulling more staff back to the central office in Washington, DC, while leaving a single Regional Administrator (RA) for each of the ten HHS regions. States have noted some challenges in the new structure, including that the roles of the RAs are not strongly defined, there continues to be a lack of consistency from region to region, and there are now fewer in person regional meetings that were very helpful before.

Recommendation: Explore whether the current model is the best fit for ACL and continue to strive for consistency across regions.

Senior Employment

Background: The Senior Community Service Employment Program (SCSEP), established under the OAA, is the only Federal jobs program targeted at older Americans. The program not only provides key employment and job training, but also a suite of supportive services that truly make the program unique. Currently, SCSEP is housed by the Department of Labor, which does not have expertise in serving older adults or addressing the unique health, social, and employment needs of these individuals. ADvancing States believes that ACL should perform oversight of the program, as it is where all other OAA programs are managed.

Recommendation: Transition the SCSEP program from the Department of Labor to ACL.

Veteran-Directed Care

Background: Veteran-directed care (VDC), formerly VDHCBS, is a cash and counseling model of delivering LTSS services for eligible veterans. The program, while successful, remains small—and we continue to hear about states and local CBOs interested in participating in the program but there are a number of barriers, including getting Veterans Affairs (VA) Medical Centers and Veterans Integrated Service Networks to agree to participate in and provide funding for the program.

Recommendations:

1. ACL should lead a convening of key national organizations, federal agencies and local partners to address some of the current issues with the program and increase uptake;
2. The VA should provide national policy guidance to support uptake of the program at local centers around the country;
3. The VA should increase internal staffing that is dedicated to support VDC.

OAA State Performance Reporting (SPR)

Background: The COVID-19 pandemic has impacted state systems in a multiplicity of unprecedented ways. These impacts will have significant effects on data reported for the OAA though the SPR. Additionally, with the upcoming changes from the SPR to the new Older Americans Act Performance System (OAAPS), states believe that the SPR validation process should not be conducted as it will no longer be relevant once the OAAPS system is fully implemented.

Recommendations:

1. State Units on Aging (SUAs) would greatly benefit from additional ACL guidance on the upcoming SPR, including ACL's specific intentions for address the SPR variances due to COVID-19, the CARES Act, the FFCRA, and the MDD; and
2. ACL should suspend variance reporting until the OAAPS is fully implemented with prior year comparison data available.

Regulations for Centers for Independent Living

Background: In 2016 ACL published new federal regulations for Centers for Independent Living (CILs). Since then, however, states have been awaiting ACL's publication of CIL compliance indicators, which were supposed to have already been published in the Federal Register. None of the reporting tools or documents, aside from the State Plan for Independent Living (SPIL), have been updated to reflect the new regulatory structure. Additionally, there is no Program Performance Reporting (PRR) reporting system and the SPIL system has not been finalized. Finally, ACL was supposed to host the PPRs and SPILs for each state on the ACL website, but this has not been done consistency.

Recommendation: State agencies request guidance and clarity from ACL regarding these regulatory and operational requirements for CILs.

ACL Strategic Framework

Background: In 2020 ACL released a *Strategic Framework for Action: State Opportunities to Integrate Services and Improve Outcomes for Older Adults and People with Disabilities*, to support partnerships across health care and social services that better serve older adults and people with disabilities. In January 2021, CMS released a State Health Officials letter that outlined options and opportunities to address social determinants of health through the Medicaid program that included a reference to this framework.

States are also eager to know if the new administration will be continuing down the path of this framework or if it will be looking to take things in a new direction. If states are to move forward with implementing provisions from the framework, they want to ensure they have the backing of both ACL and the Centers for Medicare and Medicaid Services (CMS).
Recommendations:

1. If the new administration intends to promote the Strategic Framework, states will require specific guidance and support from ACL on SUA responsibilities and authorities, such as the parameters for state oversight and auditing of entities created by the OAA that are leveraging outside funding; and

2. The framework materials need additional details on ensuring the priority of the OAA in the aging network so that limited OAA funding is not diverted to support a better-financed medical system

ACL Technical Assistance

Background: Trump Administration's focus on integrating the health care and social service sectors demonstrated a need for additional "business acumen" training at the state, local CBO, and provider levels. Additionally, training related to HIPAA and other key health care sector considerations would be helpful as well since many of the entities participating in this initiative are social service providers without much background in or understanding of health care regulations and requirements.

Similarly, the evolution of the aging network requires different technical skillsets and knowledge. This change in staffing needs is occurring at each level, including the State agencies, and ACL has recognized this with a plethora of technical assistance centers that target specific topics, populations, or jobs within the network. At this time, there is no center that provides technical assistance and training specifically to state agencies.

Recommendations:

1. Continue and expand business acumen training for states and community-based organizations; and
2. Establish a technical assistance center specifically targeted to state agency directors and staff.

Funding & Support for Critical Issues: Alzheimer's & Caregivers

Background: The Alzheimer's Association estimates that there are over five million people aged 65+ who are currently living with Alzheimer's in America.[6] The Association further estimates that these individuals cost the Medicare and Medicaid programs a combined $200 billion annually. State agencies serving older adults can provide needed supports, including meals, HCBS supportive services, and caregiver supports to help lessen the burden on family members and

[6] 2020 Alzheimer's Disease Facts and Figures

the healthcare system. Yet states report challenges with financing and coordinating services for older adults with Alzheimer's and their families.

The National Alliance for Caregiving and AARP estimate that there are fifty-three million unpaid caregivers in the United States in 2020.[7] In 2017, the unpaid caregiving performed would equate to approximately $470 billion if it were paid at the national average of $13.81.[8] Yet many caregivers experience burnout from the demands of providing support to their loved ones coupled with managing their own lives, jobs, and families. Providing additional support, counseling, and services to the caregiver can allow the individual they care for to remain at home or in the community and delay or prevent enrollment in Medicaid LTSS.

Recommendations:

1. Increase targeted funding to support Alzheimer's services for older adults and increase funding for the National Family Caregiver Program to expand its ability to serve family caregivers;
2. Provide training and technical assistance on Alzheimer's services to state, AAA, and community-based organization staff.

State Plan on Aging

Background: The State Plan on Aging, required by Section 307 of the OAA, is produced by each State Unit on Aging for either a two-, three-, or four-year period. Historically, this plan has focused largely on the Older Americans Act and functions of the State Unit on Aging, yet the past 15 years have seen an increased recognition that there is value in aligning and coordinating a wide range of LTSS and other supports, including services for both older adults and people with disabilities. Many states have reorganized to include adults and people with disabilities in a single state agency and have engaged in broader efforts to develop comprehensive planning and service structures, such as master plans on aging across the entire government or establishment of age-friendly communities. ACL's written state plan guidance recognizes the need for coordination and integration, directing states to include goals and objectives that measure progress "incorporating aging setwork services with other Home

[7] 2020 Report: Caregiving in the U.S.
[8] Valuing the Invaluable: 2019 Update

and Community-Based Services."[9] However, states report varied messaging from ACL on this topic with some regions encouraging comprehensive plans that address the wide range of LTSS and other supports while other regions direct states to focus solely on OAA services.

Recommendation: ACL should ensure that each region is providing clear and consistent messaging regarding the contents of the state plan and the value of incorporating a wide range of services, supports, and populations within the planning process and written document.

MEDICAID LTSS PRIORITIES

Equality Between Home & Community-Based Services & Nursing Facilities

Background: When Medicaid was created in 1965, institutional care was the predominant way of providing services to older adults and people with disabilities. The Medicaid statute reflects this, with the underlying statute building all LTSS on the platform of institutional care. For example, HCBS waivers must be cost-neutral when compared to comparable institutional care costs. Medicaid law and regulations also have varying eligibility pathways and income methodologies that are used in institutional and HCBS, which frequently are more lenient in institutional settings. Individuals enrolling in institutions also have the option for rapid eligibility and presumptive screening, which is not allowed in HCBS settings. One other example is that 1915(c) HCBS waivers can have waiting lists, whereas institutional care is a mandatory entitlement in Medicaid.

Recommendations:

1. Create equality between "institutional" and "community" eligibility rules, including deeming policy;
2. Allow states to establish presumptive eligibility programs for HCBS;
3. Modify the statute to enable states to better manage institutional utilization, such as by allowing waiting lists similar to 1915(c) waivers.

[9] State Unit on Aging Directors Letter #02-2019

Additional Funding for Providers

Background: Current CMS policy allows for “retainer payments” to be made for certain services when the participant is not able to attend. This policy pre-existed the COVID outbreak and was largely provided to ensure that individuals who entered a hospital or nursing home short-term stay were able to return to their Medicaid home and community-based services providers upon discharge. As such, Federal policy restricts these payments to providers of personal care and habilitative services and includes stringent time limitations on their use. The COVID social distancing and shelter-in-place orders has led to some community-based provider closures and extreme fiscal challenges due to the reduced service utilization outside of individuals’ homes. This has further exposed the fragile nature of a wide range of Medicaid-enrolled providers. The inability of states to pay retainer payments risks further erosion of the already tenuous LTSS provider networks.

Recommendations:

1. Provide authority for states to make retainer payments to any Medicaid enrolled provider that, at state discretion, would risk insolvency due to COVID-related issues;
2. Allow additional 30-day retainer payment periods beyond the current three that are allowed; and
3. Work with Congress to provide increased FMAP for HCBS provider payments.

Further Support Implementation of “Dual Eligible” Initiatives

Background: Over the past decade, CMS and states have engaged in many activities to align services for individuals enrolled in both Medicare and Medicaid. These range from programs to align grievance and appeals for Medicare and Medicaid, others that promote better integration and uptake of Dual Eligible Special Needs Plans (D-SNPs), and still others that create a unified contract and funding mechanism for Medicare and Medicaid services. These initiatives require significant time and effort from the state agency, as well as substantial investment of state funding. They also require significant knowledge and understanding of the Medicare program in addition to Medicaid, which is a skillset that is very challenging to find in an employee.

Recommendations:

1. Provide grants to states to assist with staffing, infrastructure development, and establishment of dual eligible integration programs;
2. Provide intensive technical assistance and training to state agencies on Medicare policy and integration requirements.

We appreciate the opportunity to submit these recommendations. We look forward to further conversation with you and the new leadership at CMS and ACL in order to work together to achieve these goals. If you have any questions about this letter, please reach out to Adam Mosey (amosey@advancingstates.org) or Damon Terzaghi (dterzaghi@advancingstates.org) of my staff.

Sincerely,

Martha A. Roherty

Martha A. Roherty, *Executive Director – ADvancing States*