



Advocacy. Action. Answers on Aging.

December 3, 2009

The Honorable Harry Reid  
Majority Leader  
United States Senate  
Washington, DC 20510

Dear Majority Leader Reid:

The National Association of Area Agencies on Aging (n4a), which represents the 629 Area Agencies on Aging and 244 Title VI Native American aging programs in the U.S, commends you on the introduction of the *Patient Protection and Affordability Act* (H.R. 3590). n4a believes that the bill represents significant progress in enhancing access to and affordability of health care for all Americans, containing health care costs and improving quality. We particularly appreciate the inclusion of several provisions—long-term services and supports, prevention and wellness programs and Medicare Part D improvements, among others—in your bill. More detailed remarks follow, including relevant comparisons to the House-passed health care reform bill, H.R. 3962.

### **Long-Term Services and Supports**

One of n4a's top priorities for health care reform was the inclusion of long-term services and supports (LTSS) reforms. While the bill does not yet contain a critical LTSS non-Medicaid provision (S. 1257, *Project 2020*), we commend you for including several other key LTSS elements, including the Community Living Assistance Services and Supports (CLASS) plan, funding for Aging and Disability Resource Centers (ADRCs), improvements to home and community-based services in Medicaid, and an extension of the Money Follows the Person re-balancing program. The Senate bill goes well beyond the House bill in the area of LTSS and we appreciate the Senate's emphasis on this critical aspect of health care.

### ***CLASS Plan***

This new, voluntary long-term care insurance program represents a significant step forward in how future older adults and people with disabilities will be able to afford and access home and community-based services. According to the Congressional Budget Office, the CLASS

plan will reduce Medicaid spending and will be solvent and sustainable for the long term. And it will help individuals and families struggling to maintain their independence and financial stability by providing a much-needed daily benefit to help purchase the care they need to stay healthy and at home. n4a is pleased that both House and Senate policymakers included the CLASS plan in the bills, and we will do our part to ensure that it remains in the final bill.

#### ***Aging and Disability Resource Centers***

The bill provides \$10 million a year over five years (FY 2010-2014) for the continuation of ADRCs through the demonstrations developed by the Administration on Aging and the Centers for Medicare and Medicaid Services. n4a is pleased that Congress fully recognizes the value that this single entry point model for consumers in need of LTSS has already shown, and we believe that this new, stable source of funding for the ADRC program will help grow the system nationwide, over time. The ADRCs will also play a critical role in helping future CLASS plan benefit recipients access LTSS services. Since the House bill does not include a similar provision, we hope that the Senate's language on ADRCs will be maintained during conference.

#### ***Medicaid HCBS Improvements***

n4a has long championed the re-balancing of Medicaid long-term care programs to encourage the provision of home and community-based services (HCBS) over institutional care. Your bill contains several advancements in this regard that are worthy of praise. We support Sec. 2402, which removes certain barriers to providing Medicaid HCBS by offering states more flexibility in state plan amendments for HCBS.

n4a also supports the changes made in Sec. 2404 based on the ***Empowered at Home*** legislation to modify the spousal impoverishment statute to mandate that states include the spousal impoverishment protections in their waiver programs—thus correcting a huge oversight in the law that did not offer spouses of HCBS beneficiaries the same protections available to nursing facility residents' spouses.

We note the importance of the ***Community First Choice*** option in the bill in Sec. 2401, which offers states a financial incentive to further rebalance the provision of LTSS in Medicaid. Individuals in participating states would gain guaranteed access to community-based attendant services—currently, only institutional care is guaranteed. We are hopeful that this and other rebalancing incentives will continue to shift the institutional bias that currently exists in most states.

Another LTSS provision in the bill would also help shift LTSS policy in the right direction. Sec. 2402 contains language that expands the services available, removes the ability of the state to cap the number of individuals who receive coverage for the benefit and creates a grandfather provision for beneficiaries receiving services if a state changes its eligibility criteria. These are important changes that make it more likely that states will take up the HCBS state plan option created by the Deficit Reduction Act. Unfortunately, the bill drops the ***Home and Community-Based Incentives Program***, originally drafted by Senators Cantwell and Kohl, which provides states with financial incentives and regulatory tools to

expand HCBS in a fiscally responsible manner. n4a hopes that the funding to provide states adequate financial incentives to offer HCBS will be restored in the final version. The greater the range of incentives provided to states to rebalance their Medicaid LTSS systems, the greater the gain for beneficiaries and federal and state budgets.

Finally, thank you for reauthorizing the *Money Follows the Person* program originally authorized under the Deficit Reduction Act of 2005. Sec. 2403 continues federal support through 2016 for grants to states to transition Medicaid-enrolled nursing facility residents to their homes or other community settings, while making some positive changes to the minimum residency requirement (from six months to 90 days). It is yet another important approach to encourage rebalancing and is projected to help more than 30,000 individuals in returning home or to another appropriate and desired non-institutional setting.

Since none of these LTSS provisions, with the exception of the CLASS plan, are addressed in the House bill, n4a will continue to advocate for their passage on the Senate floor and throughout the conference committee process.

#### ***What's Missing? Project 2020 Amendment Addresses Non-Medicaid LTSS***

Lastly, n4a urges you to consider including in your manager's amendment or to support a floor amendment based on S. 1257, *Project 2020: Building on the Promise of Home and Community-Based Services*. Complementary of the other LTSS provisions currently in the bill, *Project 2020* would add tremendous value to the bill's LTSS policy goals. By rolling out tested and proven programs developed by the Administration on Aging on a nationwide basis, *Project 2020* authorizes three programs: single entry point access to information on LTSS (building on the ADRC model but providing the infrastructure for every community to have an ADRC-like system), evidence-based health promotion and disease prevention programs targeted to the health needs of older adults, and enhanced nursing home diversion programs to divert or delay spend-down to Medicaid among the frail elderly population.

We are encouraged by the Sense of the Senate language included in the bill in Sec. 2406, which urges Congress to adopt comprehensive reforms in the provision of LTSS to older adults and individuals with disabilities in the setting of their choice. We urge Congress to follow through on this charge before the end of the 111<sup>th</sup> Congress.

**While we understand you cannot fully address LTSS reform in a comprehensive way in this health care reform measure, we urge you to follow through on that promise by including S. 1257 in H.R. 3590—we cannot wait for a second round of reforms to shore up the aging services infrastructure that we will need to handle the aging of America.**

#### **Medicare Part D Improvements**

We support provisions under Sec. 3204 that would make improvements to the annual enrollment process for beneficiaries. In particular, the provision to change the timing of the Part C and D enrollment period to begin on October 15 and end December 7, starting in 2012. And the provision for annual 45-day period of dis-enrollment from MA plans to allow

beneficiaries to change their election to the original Medicare fee-for-services program under Part A and B, beginning in 2011.

We encourage the Senate to support the more expansive provisions in the House bill to close the Part D coverage gap and lower prescription drug prices. The Senate bill under Sec. 3315 would provide a one-time coverage limit increase by \$500 for 2010. However, the House proposal under Sec. 1181 would go much further by increasing initial coverage limit by \$500, effective 2010, and progressively decreasing annual out-of-pocket threshold to close coverage gap by 2019. In addition, the House bill under Sec. 1182 provides discounts of 50 percent for brand-name drugs used by Part D enrollees in the Part D coverage gap, effective 2010. By comparison, the Senate bill under Sec. 3301 requires drug manufacturers to provide a 50 percent discount off the manufacturer's negotiated price to Part D beneficiaries for brand-name drugs purchased during the coverage gap, effective 2010.

We also encourage the Senate to include the House provision under Sec. 1186 requiring the Secretary to negotiate with drug manufacturers for lower Part D drug prices. This provision would become effective on the date of enactment and would apply to negotiations and prices for plan years beginning on January 1, 2011.

We support provisions under Sec. 3305 that would provide improved information to low-income subsidy eligible beneficiaries who are reassigned to a new prescription drug plan. This provision would require that these beneficiaries receive information on the differences between their old and new plan benefits and their rights for coverage determinations, exception, or reconsideration, and to bring an appeal.

We are especially appreciative of the additional funding to support *outreach and assistance for Part D and low-income prescription drug programs* by State Health Insurance Assistance Programs (SHIPs), AAAs, Aging and Disability Resource Centers (ADRCs), and the National Center for Benefits and Outreach Enrollment. By amending MIPPA, this provision under Sec. 3306 would provide a total of \$45 million to these entities between FY 2010 and 2012. In addition to these efforts, the funded entities would support outreach activities aimed at preventing disease and promoting wellness.

### **Prevention and Wellness Provisions**

We are generally very supportive of efforts in the bill to expand coverage of preventive health services under the Medicare and Medicaid programs. We are also supportive of the provisions in the bill to implement a national strategy and grant programs to support community-based prevention and wellness programs. We believe the Community Transformation Grants under Sec. 4201 and the "Healthy Aging, Living Well" program under Sec. 4202 will both go a long way toward providing more preventive health services and achieving the goal of reducing chronic diseases and addressing health disparities.

However, we believe that any final legislation should provide a more defined role for the Administration on Aging and the national Aging Services Network in these programs. n4a is concerned that the legislation, as currently written in both Senate and House versions, would

inadvertently overlook tested and proven evidence-based health promotion and disease prevention programs currently being provided by the Aging Services Network under AoA's leadership. We hope to work with you to remedy that oversight.

**Elder Justice Act Provisions**

n4a greatly appreciates that you included in Sec. 6703 provisions of the Elder Justice Act that would implement a comprehensive national strategy to address elder abuse, neglect and exploitation. This section would enhance the training, recruitment and staffing in long-term care, efforts to enhance state adult protective service systems, long-term care ombudsman programs, and law enforcement practices. Passage of the Elder Justice Act is long overdue and we are hopeful that this language will ultimately pass as a part of health care reform.

Additionally, we are supportive of the Senate bill's language on nursing home transparency and criminal background checks, and its counterpart provisions in the House bill.

Thank you for your leadership on these critical health policy issues that directly affect older adults and their caregivers. We are hopeful that the Senate bill can be improved and advanced, with the ultimate goal of finalizing a strong, balanced, bicameral measure.

Sincerely,



Sandy Markwood  
Chief Executive Officer

cc: The Honorable Mitch McConnell, Senate Minority Leader  
The Honorable Max Baucus  
The Honorable Tom Harkin  
The Honorable Christopher Dodd  
The Honorable Nancy Pelosi, Speaker of the House  
The Honorable John Boehner, House Minority Leader  
The Honorable Henry Waxman  
The Honorable Charles Rangel  
The Honorable George Miller