

April 26, 2021

The Honorable Debbie Dingell
U.S. House of Representatives
Washington, DC 20515

The Honorable Bob Casey
U.S. Senate
Washington, DC 20510

The Honorable Maggie Hassan
U.S. Senate
Washington, DC 20510

The Honorable Sherrod Brown
U.S. Senate
Washington, DC 20510

Dear Representative Dingell and Senators Hassan, Casey, and Brown:

The American Geriatrics Society (AGS) greatly appreciates the opportunity to comment on the discussion draft of the Home and Community-Based Services Access Act (HAA). The AGS is a not-for-profit organization comprised of nearly 6,000 geriatrics health professionals who are devoted to improving the health, independence, and quality of life of all older adults. Our members include geriatricians, geriatrics nurse practitioners, social workers, family practitioners, physician assistants, pharmacists, and internists who are pioneers in advanced-illness care for older individuals, with a focus on championing interprofessional teams, eliciting personal care goals, and treating older people as whole persons. We provide leadership to healthcare professionals, policymakers, and the public by implementing and advocating for programs in patient care, research, professional and public education, and public policy.

We applaud your meaningful commitment to and leadership on re-envisioning and reforming long-term services and supports (LTSS) and your efforts to strengthen home and community-based services (HCBS). Strengthening HCBS to go beyond patchwork waived funding will improve the life experience of innumerable older Americans who want to retain their dignity while remaining in their homes, lower costs by avoiding long-term care in institutional settings, and improve inequities by assuring that all states provide these services.

AGS believes that a just healthcare system should treat similarly situated people equally, as much as possible.^{1,2,3} We appreciate that the proposed legislation advances us towards that goal by proposing consistent eligibility criteria so that where we live in the country does not determine whether we have access to HCBS. This legislation is critical to ensuring that we have access to the supports that we need as we age.

¹ Lindland E, Fond M, Haydon A, Kendall-Taylor N. Gauging aging: mapping the gaps between expert and public understandings of aging in America. Available at http://www.frameworksinstitute.org/assets/files/aging_mtg.pdf. Published June 18, 2015. Accessed April 23, 2021.

² FrameWorks Institute. Gaining Momentum: A FrameWorks Communications Toolkit. Available at <http://www.frameworksinstitute.org/toolkits/aging>. Accessed April 23, 2021.

³ Volmert A & Lindland E. "You only pray that somebody would step in": mapping the gaps between expert and public understandings of elder abuse in America. Available at https://www.frameworksinstitute.org/assets/files/elder_abuse_mtg_report_formatted_final.pdf. Published January 6, 2016. Accessed April 23, 2021.

As a more general note, the AGS encourages the use of more-neutral, inclusive, and consistent language. When describing older adults, it is important to not use words like (the) aged, (the) elderly, and seniors. Such terms can otherize older adults and some terms evoke discrimination and negative stereotypes.⁴ Reframing the language may help drive a more productive narrative.

We appreciate the opportunity to review this draft bill and to share our recommendations which we hope you will consider as you move through the legislative process.

LONG-TERM CARE INFRASTRUCTURE

The AGS supports robust choice for older adults and their families, which requires access to a full range of LTSS – skilled nursing facility and congregate living, community-based, home-based, and other alternative programs for preventing or delaying nursing home placement.

We strongly support your vision of robust HCBS as a critical component of LTSS. At the same time, we recognize that part of the journey for people with advanced, chronic illness and disability may include a nursing facility stay and believe that HCBS is only one part of the equation. It is important to recognize that there is not a one-size-fits-all for older Americans who need LTSS. What is most important is that we have multiple options available so that we are providing individuals options that meet their needs. Federal policy should maximize both HCBS and facility-based care so that we are reimagining what best meet the needs of older Americans by ensuring that they have access to both home and community-based services and high-quality facility-based care. We recognize and support the need for reforms to address the issues in long-term care that is facility-based that were laid bare by the COVID-19 pandemic and are looking forward to the release of the National Academies of Science, Engineering, and Medicine’s framework and general principles that is focused on improving the quality of nursing home care later this year.⁵

We hope that implementation of the HAA does not result in the starving of funds for or, for that matter, a lack of attention to the need for quality nursing facilities. Although the crisis facing nursing facilities was spotlighted by the COVID-19 pandemic, the population of frail, functionally impaired older people who need access to such care settings will continue to grow. **The AGS encourages increased accessibility to HCBS but also continued promotion of high-quality nursing home care to make both resources appropriate alternatives in our communities as opportunities for care and service for those who need it and employment opportunities for workers.** As we undertake reforms, it is important to bridge the chasm between community-based and institutional care and better integrate members of different generations. Both types of settings should be an integral part of the social fabric of our daily lives. For example, we strongly encourage schools, religious organizations, and service organizations to engage with our older adults in all care settings. Other considerations include addressing local building codes to make it easier for people to age in place and assuring that public transportation supports

⁴ Lundebjerg NE, et al. When it comes to older adults, language matters: *Journal of the American Geriatrics Society* adopts modified American Medical Association style. *J Am Geriatr Soc.* 2017;65(7):1386-1388. <https://doi.org/10.1111/jgs.14941>.

⁵ The National Academies of Sciences, Engineering, and Medicine. The Quality of Care in Nursing Homes. Available at <https://www.nationalacademies.org/our-work/the-quality-of-care-in-nursing-homes>. Accessed April 23, 2021.

people with disabilities and us all as we age. Further, zoning regulations should be considered as a tool for creating villages within the lived landscape.

INTEGRATION AND COORDINATION OF HCBS

The way the LTSS system is currently set up is not effective and will require a relook at the entire process. The AGS believes that older adults should be informed of their LTSS options by organizations with knowledge and experience working with and informing older populations. We are aware that many organizations, such as large multistate health systems and large insurance companies across multiple states that are not locally connected to the HCBS network are foregoing community partnerships (including partnerships with Area Agencies on Aging (AAA)) and instead hiring for-profit groups who have little on-the-ground knowledge of local community resources and supports. **We support having a standardized approach that includes education about LTSS for older adults and provides specific information on HCBS options that are available in their locales.** We recognize that such information would need to be tailored to each community's and state's resources and options but believe that standardizing how information and education are provided will better support American families who are increasingly providing long-distance caregiving. One example of how programs differ by state is that the Program of All-Inclusive Care for the Elderly (PACE) is only in 31 states and limited in a number of other states.⁶ We want to ensure that we are supporting states to address HCBS deserts so that they can implement programs like PACE that support older Americans staying active in their communities with local access to the services they need.



AGS members focus on the 5Ms of geriatrics: **M**ultimorbidity, **W**hat **M**atters, **M**edication, **M**entation, and **M**obility.⁷ Multimorbidity describes the older person who has more complex needs often due to multiple chronic conditions or frailty. What Matters, Medication, Mentation, and Mobility describe the four main areas where geriatrics health professionals focus their attention when caring for an older person and form the basis for the age-friendly health systems movement that is working to ensure that

⁶ National PACE Association. PACE in the States. Available at <https://www.npaonline.org/sites/default/files/PDFs/PACE%20in%20the%20States%20December%202020.pdf>. Published December 2020. Accessed April 22, 2021.

⁷ Adapted by the American Geriatrics Society (AGS) with permission from "The public launch of the Geriatric 5Ms" [on-line] by F. Molnar and available from the Canadian Geriatrics Society (CGS) at <https://canadiangeriatrics.ca/2017/04/update-the-public-launch-of-the-geriatric-5ms/>.

all older people have access to this type of coordinated care, while also making sure personal needs, values, and preferences are at the heart of that care.⁸

To maintain health, independence, and quality of life of older Americans, we believe that we need to work towards better integration of HCBS and long-term care with health systems and with primary care. At the Health Resources and Services Administration (HRSA), both the Geriatrics Workforce Enhancement Program (GWEP) and the Geriatrics Academic Career Awards (GACA) program focus on improving the knowledge and skills of the workforce; building stronger partnerships between community-based organizations, health systems, and primary care providers; and working to become recognized as an Age-Friendly Health System. We believe that it is critically important that we invest in the workforce that is needed to care for older Americans as a part of an investment in HCBS infrastructure.

Our practitioners have seen gaps in coordination in the planning and delivery of HCBS services resulting from organizational silos perpetuated by overlapping missions and perspectives of states, the Centers for Medicare and Medicaid Services (CMS), AAAs, and community-based organizations delivering social services. In many states, the AAAs are the backbone for assessing and developing care plans under Medicaid waivers. The AAAs should be supported and encouraged to participate in and refer to innovative new models and programs that support older Americans where they live. With the growth of Managed Long-Term Services and Supports (MLTSS) program in Medicaid, other states have shifted from the AAAs to private plans. Across community-based networks and healthcare systems, we need to ensure that referrals for healthcare and case management are free of conflict and that criteria are in place to ensure that older Americans are referred to programs and services that best meet their needs.

Given the differences in how states are managing these services and the need to ensure access to services at the local level, **AGS recommends that CMS develop an integrated program that addresses health equity across silos and that allows innovation and partnership in the development of local capabilities to provide care plan development and management.** We believe that the AAAs will be a critical component of that effort given their depth of expertise and understanding of their own states.

ELIBILITY CRITERIA

The AGS believes that eligibility criteria for service must be objective and consistent across states.

Implementing national eligibility criteria would help with non-Medicaid funded services and allow for further innovation such as piloting a Medicare-only PACE that serves older Americans across different states.

We note that the discussion draft proposes eligibility based on an inability to perform, without assistance, two or more activities of daily living (ADL) or two or more instrumental activities of daily living (IADL). Though the premise of the criterion might make sense since these individuals are not quite eligible for skilled nursing facilities, the underlying assumption seems to be that the focus is on prevention and maintenance in the home of someone who meets these criteria. We are not aware of

⁸ Institute for Healthcare Improvement. Age-Friendly Health Systems: Guide to Using the 4Ms in the Care of Older Adults. Available at http://www.ihl.org/Engage/Initiatives/Age-Friendly-Health-Systems/Documents/IHIAgeFriendlyHealthSystems_GuidetoUsing4MsCare.pdf. Published July 2020. Accessed April 22, 2021.

programs using IADL limitations as eligibility criteria and believe adding this criterion might need further discussion and review.

IMPROVING BENEFICIARY ACCESS

Currently, there are 11 million older Americans who are dually eligible for Medicare and Medicaid.⁹ These beneficiaries are among the highest need populations in both programs. Dual-eligible older adults receive care in multiple care settings that is often fragmented and uncoordinated. **We strongly encourage you to consider new policies that would promote improved coordination and integration of benefits and overcome misalignments in Medicare and Medicaid.** Programs such as PACE and Dual Eligible Special Needs Plans (D-SNPs) provide and coordinate the delivery of Medicare and Medicaid benefits, however, these programs are not always accessible to all who could benefit. In general, it will be important to consider how benefits for comprehensive medical and social services can be integrated and who will be responsible for coordinating care (the insurer or the state).

An additional example of a program that supports older adults to age in place is Community Aging in Place—Advancing Better Living for Elders (CAPABLE), which is a home-based intervention by an occupational therapist (OT), a nurse, and a handy worker (provides modifications and repairs to the home as directed by the OT) working together to increase mobility, functionality, and capacity to “age in place” for older adults. CAPABLE has been tested in multiple small and large trials, which showed improved function and a decrease in hospitalization. The larger studies have also showed decreased nursing home admission. **The AGS supports policies like these that will assist in increasing access to innovative HCBS models like CAPABLE.**

WORKFORCE SUPPORT AND DEVELOPMENT

In addition to our above discussion of the important role of the GWEPs and the GACAs in ensuring that the workforce is prepared to care for older Americans, we would like to highlight the direct care workforce. Direct care workers are vital to supporting older adults at home and in congregate living settings. They provide hands-on, personal care with tasks such as eating, bathing, grooming, toileting and transfers — work that is physically and emotionally demanding — to millions of older Americans. At present, women account for nearly 90 percent of the direct care workforce¹⁰ and women of color account for 48 percent of this workforce in the United States.¹¹ Hourly rates are low (often \$12 or less per hour),¹² and direct care workers often lack paid family leave, and other benefits such as health

⁹ Centers for Medicare and Medicaid Services (CMS). Medicare-Medicaid Duals Enrollment Snapshot (quarterly release). Available at <https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Analytics>. Published April 2021. Accessed April 22, 2021.

¹⁰ PHI National. Direct Care Workers in the United States: Key Facts. Available at <https://phinational.org/wp-content/uploads/2020/09/Direct-Care-Workers-in-the-United-States-2020-PHI.pdf>. Published September 2020. Accessed April 19, 2021.

¹¹ PHI National. Issue Brief: Racial and Gender Disparities Within the Direct Care Workforce: Five Key Findings. Available at <https://phinational.org/wp-content/uploads/2017/11/Racial-and-Gender-Disparities-in-DCW-PHI-2017.pdf>. Published November 2017. Accessed April 19, 2021.

¹² Raghu, M. & Tucker, J. National Women’s Law Center. The Wage Gap Has Made Things Worse for Women on the Front Lines of COVID-19. Available at <https://nwlc.org/blog/the-wage-gap-has-made-things-worse-for-women-on-the-front-lines-of-covid-19/>. Published March 30, 2020. Accessed April 19, 2021.

insurance.¹³ Improving LTSS across settings will require an investment in the direct care workforce so that all direct care workers are paid a living wage, have health insurance, and access to paid family, medical, and sick leave. It is also important that we ensure that working conditions are safe and appropriate. Direct care workers must have opportunities for advanced roles as well as educational opportunities to increase skillsets and income potential, including access to scholarship support. This will require an investment in the organizations providing HCBS above what is currently being paid. Though a 100 percent federal match is a useful first step, it will not achieve these goals absent a concrete reimbursement policy that includes a floor. **The AGS urges that the bill include an assurance of adequate Medicaid payment/capitation and we are supportive of the President’s proposal to invest \$400 billion in this workforce as an investment in the infrastructure that we need to care for us all as we age.**

Currently, across the eldercare workforce, little attention is paid to ensuring all workers are trained to provide the highly skilled and coordinated services that are the hallmark of high-quality care for older people. As noted above, the GWEPs and the GACAs are critically important to ensuring that we are meeting the educational needs of this workforce. Further, these two programs are the only federal programs supporting geriatrics health professions education and training in the community. The GWEPs educate and engage the broader frontline workforce, including family caregivers and direct care workers, and focus on opportunities to improve the quality of care delivered to older adults. The GACA program develops the next generation of innovators to improve care outcomes and care delivery. Investing in these programs is imperative to expanding understanding of geriatrics, ensuring a pipeline of geriatricians, and maintaining the health and quality of life for us all as we age. At minimum, Congress should increase annual appropriations to \$51 million given the essential role awardees play in their states. We also support strengthening the pipeline of individuals to work in aging service through the following actions: 1) Implement immediate recruitment campaigns, particularly targeting displaced workers; (2) Provide funding for online training and competency evaluations; (3) Increase funding to direct care training providers to enhance the training infrastructure; and (4) Provide funding for in-person training following the public health emergency to increase and maintain direct care workforce capacity.

Moreover, though we are grateful that the proposed legislation would increase funding to states to increase the availability of HCBS and provide needed support to the direct care workforce, we need to recognize that raising the support to direct care workers will concomitantly raise the cost of providing these services to other payers, including services funded by the Older Americans Act (OAA) and other federal and state programs. Unless support is increased for these other programs, their number of older Americans that they can serve would decrease which would potentially negatively impact the positive intent of this legislation which is to increase the number of people supported through Medicaid. **The AGS encourages consideration of an alternative approach such as requiring Medicaid coverage of HCBS, as proposed in this draft legislation, while concurrently addressing the support of direct care workers and increased funding of HCBS through provisions that are inclusive of a broader payer source.**

¹³ PHI National. Caring for the Future: The Power and Potential of America’s Direct Care Workforce. Available at <https://phinational.org/wp-content/uploads/2021/01/Caring-for-the-Future-2021-PHI.pdf>. Published January 2021. Accessed April 19, 2021.

OTHER POLICIES AND PROGRAMS

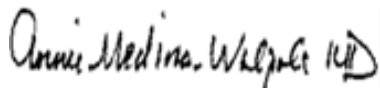
We appreciate that extensions of the Money Follows the Person (MFP) program and HCBS spousal impoverishment protections through September 2023 were included in the Consolidated Appropriations Act, 2021. Both the MFP program and spousal impoverishment protections help to ensure that older adults have the option to remain at home and in the community while simultaneously improving care and achieving cost savings. While these provisions are crucial, they are not a permanent fix.

The MFP program helps older adults and people with disabilities transition out of nursing homes and other facilities back to living in their communities. Since the start of the program in 2008 through the end of 2019, 101,540 people have transitioned to the community under MFP.¹⁴ The program has also helped states 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, recent data revealed that lapses in funding and multiple short-term extensions of the program for several months at a time have led to significant reductions in state efforts to transition people out of institutions.¹⁵ **The AGS supports making the MFP program permanent to ensure its success continues.**

Medicaid's spousal impoverishment protections ensures that an individual who needs a nursing home level of care qualifies for Medicaid while their spouse retains a modest amount of income and resources as the other spouse receives LTSS. Without these protections, people who are eligible for HCBS at a nursing facility level of care could be forced into more costly institutional care against their wishes and progress made by states in helping older adults and people with disabilities remain at home and in the community may be stalled or reversed. **We encourage Congress to pass S.1099/H.R.1717 to amend title XIX of the Social Security Act to make permanent the protections under Medicaid for recipients of home and community-based services against spousal impoverishment.**

Thank you for all you are doing to support older people and the direct care workforce. We appreciate the opportunity to submit these comments. For additional information or if you have any questions, please contact Anna Kim at akim@americangeriatrics.org.

Sincerely,



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President



Nancy E. Lundebjerg, MPA
Chief Executive Officer

¹⁴ Liao, K. & Peebles, V. Money Follows the Person: State Transitions as of December 31, 2019. Available at <https://www.medicaid.gov/medicaid/long-term-services-supports/downloads/mfp-2019-transitions-brief.pdf>. Published September 2020. Accessed April 21, 2021

¹⁵ Kaye, HS & Caldwell, J. Community Living Policy Center. Short-Term Money Follows the Person Extensions Resulted in a Significant Drop in State Efforts to Transition People Out of Institutions. Available at <https://heller.brandeis.edu/community-living-policy/images/pdfpublications/2020maymfpbrief.pdf>. Published May 2020. Accessed April 21, 2021.