

STATEMENT
Of
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Executive Director
National Center for Assisted Living
To
House Ways & Means Health Subcommittee Hearing
On
“Beneficiary Protections in Medicare Part D”

June 21, 2007

Congress Should Waive Medicare Part D Co-Payments for
Dual Eligible Beneficiaries Receiving Long Term Care Services
in Home and Community-Based Settings,
including Assisted Living/Residential Care Facilities;
the House Should Immediately Introduce Companion Legislation to *S. 1107,*
The Home and Community-Based Services Copayment Equity Act of 2007.

The National Center for Assisted Living (NCAL) is the assisted living voice of the American Health Care Association (AHCA). On behalf of NCAL and AHCA, I would like to thank the Committee for this opportunity to raise an issue of vital importance to America’s seniors, particularly frail elderly people with very low incomes. AHCA/NCAL is a non-profit federation of affiliated state health care organizations, together representing nearly 11,000 non-profit and for-profit nursing facilities, assisted living residences, sub-acute centers, and homes for persons with developmental disabilities. NCAL represents more than 2,400 assisted living facilities providing long term care services to about 108,000 residents.

With Medicare Part D now in its second year, it is clear that the program has helped millions of seniors and people with disabilities gain access to needed medications. However, Medicare Part D needs to be modified so that frailest dually eligible beneficiaries (those covered by both Medicare and Medicaid) are treated equally. We believe that an existing gap in Medicare Part D coverage may well have been a mistake of omission made as policymakers put together this complex legislation.

Recognizing the vulnerability and special needs of very low-income people living in long term care facilities, the *Medicare Modernization Act of 2003* exempted dual eligible

beneficiaries living in “long term care facilities” from any cost-sharing for Part D prescription drugs. Technically, under the Medicare Part D program, the Centers for Medicare & Medicaid Services (CMS) defines a long term care facility as a nursing facility, an intermediate care facility for people with mental retardation and developmental disabilities, or an inpatient psychiatric hospital.

Unfortunately, the *MMA* legislation did not extend the waiver of co-payments for prescriptions to dual eligible residents of assisted living/residential care (AL/RC) facilities and others in home and community-based settings (HCBS), despite the fact that this population may be eligible for nursing home care and has similar needs, vulnerabilities, and income limitations. Under the Part D program, dual eligible assisted living residents and others in HCBS must make co-payments of \$1.00 - \$5.35 in 2007, with the exact amount depending on a person’s income and whether a medication is generic. Because of their very low income (often just a few dollars in a personal needs allowance), these co-payments can present financial hardships for dual eligible residents and can impede them from receiving necessary medications. Requiring these co-payments is also inconsistent with efforts to expand Medicaid-covered long term care options – including HCBS – for our nation’s most vulnerable citizens who had historically only received care in nursing homes. Under current law, these dual eligible residents automatically receive reduced Part D benefits by choosing to live at home or in an AL/RC facility rather than in a nursing home.

AHCA/NCAL thank Senator Gordon Smith (R-OR) and the nine co-sponsors—Senators Jeff Bingaman (D-NM), Barbara Boxer (D-CA), Sherrod Brown (D-OH), Maria Cantwell (D-WA), Hillary Clinton (D-NY), Susan Collins (R-ME), Blanche Lincoln (D-AR), Bill Nelson (D-FL), and John Kerry (D-MA)—who have introduced bipartisan legislation that would provide relief to this group of frail elderly individuals. *The Home and Community-Based Services Copayment Equity Act of 2007 (S. 1107)* would eliminate Medicare Part D co-payments for more than one million low-income Americans, including dual eligible residents of AL/RC facilities and other licensed facilities such as group homes for people with developmental disabilities, psychiatric health facilities, and mental health rehabilitation centers. Dual eligible beneficiaries receiving services in a home setting under HCBS waivers also would be relieved of Part D co-payments. This legislation is supported by a growing coalition of more than 35 national organizations representing a wide range of interests—consumers, health care and long-term care providers, geriatric care professionals, pharmacists, and state officials (see attached letter to Senator Smith from these organizations dated June 11, 2007). We ask that the House immediately introduce companion legislation.

Currently, approximately 15% of the nearly one million Americans in assisted living residences are dually eligible for Medicaid and Medicare coverage. Under HCBS waivers, residents placed in AL/RC facilities must be eligible for placement in nursing homes. Like nursing home residents who rely on Medicaid, more than 120,000 dual eligible residents living in AL/RC facilities have very limited financial resources—often just a few dollars a month from a personal needs allowance. These residents, like those in nursing homes, often require multiple prescription medications – about 8 – 10

prescriptions – according to recent studies. So, in some instances, the amount of their combined Medicare Part D co-pays exceeds their monthly personal needs allowances. In addition, because their Part D co-pays are indexed for inflation while their limited resources grow less rapidly, if at all, there is an even greater burden placed on these individuals.

On January 1, 2006, dual eligible beneficiaries who previously received medications under Medicaid programs were automatically enrolled in Medicare Part D drug plans. Under Part D, pharmacies and Part D Plans are not required to dispense medications if a beneficiary does not pay co-payments. Unless the law is changed, dual eligible residents of AL/RC facilities and others receiving services under Medicaid waivers who cannot afford these co-payments may be at risk for not receiving essential medications.

Another reason we support the elimination of Medicare Part D co-payments for this population is to maintain a level playing field between institutional and community-based services under Medicaid. For many years, policymakers and the public have supported expanding options for people to receive long-term care services at home and in community-based settings under the Medicaid program. AHCA/NCAL supports the principle of Medicaid providing the appropriate services in the setting that best meets each individual's needs and preferences. According to an analysis of the Medicare Part D co-payment legislation, which was conducted for AHCA/NCAL by the Lewin Group, by next year, the number of dual eligible beneficiaries in home and community based settings that would be impacted by this legislation will be larger than the number of dual eligible beneficiaries living in nursing homes and other institutions.

For a small investment in covering Medicare Part D co-pays, Congress would remove an impediment that could prevent some people from remaining at home or in an assisted living facility, thereby saving state and federal dollars as these care settings can be less expensive than the care provided in America's nursing homes. Still, the most important reason to pass this legislation is to help frail, elderly seniors afford much-needed medications.

Thank you for this opportunity to bring this important issue to the attention of the Committee.

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For more information, please contact NCAL Senior Policy Director Karl Polzer (202.898.6320, kpolzer@ncal.org) or AHCA Government Relations Director MaryAnne Sapio (202.898.6328, msapio@ahca.org).

June 11, 2007

The Honorable Gordon H. Smith
United States Senate
Room 404, Russell Senate Office Building
Washington, DC 20510

Dear Senator Smith,

The organizations listed below strongly support legislation that would eliminate Medicare Part D co-payments for low-income residents of assisted living and residential care facilities and others receiving home and community-based services under Medicaid. We commend you and your co-sponsors for introducing *The Home and Community Services Copayment Equity Act of 2007 (S. 1107)* and urge passage of this legislation.

Recognizing the vulnerability of very low-income people living in long term care facilities such as nursing homes, Congress exempted dual eligibles (people eligible for both Medicare and Medicaid) living in these facilities from any cost-sharing for Part D prescription drugs. Unfortunately, the original Part D legislation did not eliminate co-payments for dual eligible residents of assisted living and residential care, even though this population is usually “nursing-home eligible” by definition and has similar needs, incomes and vulnerabilities. Like nursing home residents on Medicaid, the 121,000 dual eligibles in assisted living and residential care have very limited financial resources, often just a few dollars a month from a personal needs allowance. For many of these residents, the amount of their Part D co-payments exceeds their monthly personal needs allowances.

Residents in nursing homes and assisted living and residential care use a similar number of prescriptions – approximately 8-10, according to recent studies. Even Part D co-payments of \$1 - \$5.35 per prescription can present financial hardships for dually eligible assisted living residents, and, as we have heard from facilities across the country, could impede people from receiving needed medications.

Passage of *S. 1107* would eliminate Part D co-payments for about 1 million dual eligible beneficiaries, including residents of assisted living and residential care as well as other licensed facilities such as group homes for people with mental retardation and developmental disabilities, psychiatric health facilities and mental health rehabilitation centers. Dual eligibles receiving services under home and community-based waivers in a home setting would also be relieved of Part D co-payments under the bill.

We would like to thank you and your colleagues for introducing this legislation and look forward to working with you to ensure its passage.

National Center for Assisted Living
1201 L Street NW, Washington DC, 20005

Sincerely,

Alliance for Holistic Aging
Alzheimer's Association
American Academy of Home Care Physicians
American Association of Homes and Services for the Aging
American Geriatrics Society
American Health Care Association
American Medical Directors Association
American Network of Community Options and Resources
American Seniors Housing Association
American Society of Consultant Pharmacists
Assisted Living Federation of America
Benjamin Rose Institute
Center for Medicare Advocacy
Consumer Consortium on Assisted Living
Developmental Disabilities Nurses Association
Epilepsy Foundation
Families USA
Long Term Care Pharmacy Alliance
Medicare Rights Center
National Adult Family Care Organization
National Alliance on Mental Illness
National Association of Boards of Examiners of Long Term Care Administrators
National Association for Home Care & Hospice
National Association of Local Long Term Care Ombudsmen
National Association of Professional Geriatric Care Managers
National Association of Social Workers
National Association of State Directors of Developmental Disabilities Services
National Association of State Ombudsman Programs
National Association of State Units on Aging
National Center for Assisted Living
National Community Pharmacists Association
National Multiple Sclerosis Society
NCCNHR: The National Consumer Voice for Quality Long-Term Care
The Arc of the United States
United Cerebral Palsy
United Jewish Communities
Washington State Long Term Care Ombudsman Program

