

**STATEMENT**  
*Of*  
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*To*  
**Senate Finance Committee Hearing**  
*on*  
**“The Medicare Prescription Drug Benefit:  
Monitoring Early Experiences”**

**May 2, 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**

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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, and particularly important for 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 dual eligibles 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 (those covered by both Medicare and Medicaid) 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 thanks Senator Gordon Smith (R-OR) and the seven co-sponsors, Senators Jeff Bingaman (D-NM), Barbara Boxer (D-CA), 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.

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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