



March 18, 2020

The Honorable Mitch McConnell  
Majority Leader  
U.S. Senate  
Washington, DC 20515

The Honorable Charles Schumer  
Minority Leader  
U.S. Senate  
Washington, DC 20515

Dear Majority Leader McConnell and Minority Leader Schumer:

The COVID-19 pandemic occurring in the United States should be of utmost concern to every lawmaker in the country. We are grateful to the Senate for their leadership as they work to craft and pass the third package of coronavirus-related relief. The American Association of People with Disabilities (AAPD) is a national cross-disability civil rights organization that works to advance the political and economic power of the more than 60 million individuals with disabilities in this country. The Center for Disease Control and Prevention (CDC) and additional public health experts have stated that people with disabilities are more vulnerable to COVID-19. Beyond the specific conditions or diagnoses that may raise susceptibility to the virus itself, people with disabilities are particularly vulnerable to the broader social, civil, and economic impacts of the coronavirus pandemic. We write today to ensure that people with disabilities' needs and concerns are being adequately addressed in existing COVID-19 relief packages.

Disability impacts every community and occurs at every stage of life. In addition to impacting people with disabilities more disparately, the virus is also likely to create disability while people recover. We urge the Senate to think boldly and broadly in their response to this pandemic and waste no time saving lives. Outlined below are a series of recommendations that we strongly support and request that the Senate incorporate into the next COVID-19 response bill.

#### **Prioritize and Expand Home and Community Based Services and Supports**

The coronavirus pandemic has demonstrated that people with disabilities are more vulnerable when living within a nursing home. Home and community-based services have proven time and again that they are the safest way to ensure dignity and health of people with disabilities. We strongly urge the Senate to take this solemn opportunity to end the institutional bias within Medicaid. We also request that the Senate end the homebound exclusion within Medicaid and increase reimbursement rates for personal attendant services, in particular, for overtime and hazard pay and increased fringe benefits. In light of the unique and serious risks facing people with disabilities and older adults in congregate care settings, we ask the Senate to authorize a 100% FMAP for home and community-based services in settings consistent with the definition of a qualified residence under the Money Follows the Person demonstration program. We also urge Congress to make the Money Follows the Person program permanent, so that transitions from the segregated and congregate settings to the community are not halted amidst the crisis. We also urge Congress to relax Medicaid's prohibition on paying for room and board for such settings. Such a policy would assist people with disabilities and older adults in exiting the most

dangerous settings for them in the current environment and would be consistent with both established best practice in disability service-provision and the unique and urgent exigencies of the current public health crisis.

We further support additional appropriations to disability rights disability-led organizations, including an additional \$100 million appropriations to Centers for Independent Living (CILs), that will work to meet the needs of people with disabilities during the response to recovery from this pandemic. We recognize that full community integration for people with disabilities becomes a more likely reality when everyone is able to receive access to paid leave. To this end, we support the Senate passing a comprehensive paid leave package.

### **Coronavirus Relief for Seniors and People with Disabilities Act**

We strongly thoroughly support the Coronavirus Relief for Seniors and People with Disabilities Act sponsored by Senator Casey (D-PA), and we urge that the provisions contained within this bill should be adopted within the 3rd package of coronavirus relief. Specifically, we believe that the bill will address critical health and economic needs for older adults, people with disabilities, front-line workers, and family caregivers by increasing funding to prevent infections in nursing homes, providing funding to states to promote home and community based services, and ensuring seniors and people with disabilities have access to healthy food. All of these steps are critical to addressing the spread of COVID-19 and addressing our nation's public health more broadly.

### **15% FMAP Increase**

As the coronavirus crisis has caused a significant economic downturn, we believe that it is essential for Congress to authorize an increase in the Federal Medicaid Assistance Percentage of 15%. This increase should be maintained until the Department of Health and Human Services certifies an end to the current pandemic, and the unemployment rate and other set economic indicators reflect a full economic recovery. Such a move is vital to ensuring that state Medicaid agencies are able to meet the challenge of the current pandemic at a time when state resources will be limited due to the economic downturn.

### **Production of ventilators, associated staff and personal protective equipment**

We are in the midst of a massive shortfall in personal protective equipment and can foresee a horrifying shortage of ventilators and other life-saving medical resources. People with disabilities are at tremendous risk, especially those whose comorbidities may put them at higher risk for discrimination in the allocation of scarce medical resources.

We urge Congress to authorize an immediate, massive investment in the expansion of ventilator production by appropriating funds for the CDC's Strategic National Stockpile to place orders for an additional 150,000 ventilators as soon as production is feasible, doubling existing national capacity. Congress should also appropriate funds for the rapid training of necessary medical personnel to operate these devices and for the purchase of additional personal protective equipment.

### **Prohibition on disability discrimination in the rationing of scarce medical resources**

People with disabilities deserve to have equal access to scarce medical resources, such as ventilators and ICU beds, and should not be subject to resource allocation discrimination when

needs exceed supply. We urge Congress to swiftly pass a statutory prohibition on the rationing of scarce medical resources on the basis of anticipated or demonstrated resource-intensity needs, the relative survival probabilities of patients deemed likely to benefit from medical treatment, and assessments of pre- or post-treatment quality of life.

While it is appropriate for providers to delay non-essential care, people with disabilities should not face discrimination in the allocation of life-sustaining treatment that will clinically benefit them. Similarly, while we recognize that providers should not be obligated to provide quantitatively futile care, we believe that during this difficult period it is especially important to protect patients with disabilities from discrimination.

### **Appropriations for HHS OCR Enforcement of Non-Discrimination**

To ensure that the rights of our community are respected within the context of the current crisis, we are requesting that Congress authorize an emergency appropriation of \$25 million to the HHS Office of Civil Rights, dedicated exclusively to the investigation of denial of care to people with disabilities and enforcement of the rights of people with disabilities to non-discrimination in healthcare settings.

### **Authorize an SSI Benefit Level Increase and Raise Asset Limits for Means Tested Programs**

People with disabilities must be included in the economic relief proposals now under consideration. Given that COVID-19 poses unique risks for people with disabilities that may make it more difficult for those on SSI to pursue or maintain employment, we urge Congress to authorize a temporary increase in the SSI benefit level to match the Federal Poverty Line, in order to ensure that people with disabilities are able to survive during the current crisis. We also urge that the SSI asset limit as well as the asset and the asset limits for Supplemental Security Income, Medicaid, SNAP, and other means tested programs be removed for the greater of the duration of the current crisis or a period of not less than one year.

### **Prescription Drug Refill**

Many people with disabilities are at increased risk of serious or fatal complications from COVID-19 (coronavirus). In an active community outbreak, the safest option may be to self-isolate at home, perhaps for weeks or longer. In order to prepare for this possibility, the CDC is currently recommending that people at high risk stock up on necessities, including maintenance prescription medications.

Unfortunately, many people with disabilities cannot take this advice because of insurance restrictions. Insurers typically refuse to cover refills on 30-day prescriptions until only three to seven days of medication remain. For certain controlled substance prescriptions, patients may be legally unable to fill a new prescription until the date that the previous prescription is scheduled to run out. We urge Congress to require, on an emergency basis, that all payers cover up to a 90-day stockpile supply of medications and supplies and to allow for partial fills of medications. We also would urge Congress to allow all payers to cover refills authorized by telehealth visits and utilize mail order pharmacies, including those out of state. Critically, we urge Congress to ensure that controlled substances are included in these provisions.

### **Opposition to ADA Modifications**

We have heard concerning reports that some have proposed the modification of the Americans with Disabilities Act and other relevant laws regarding civil rights and medical privacy to permit employers to make inquiries regarding the health status of their employees. We do not believe that the current crisis provides an excuse for discrimination and invasions of privacy already protected by law. Existing law already permits inquiries where an employee's health status constitutes a direct threat - a significant risk of substantial harm to the health or safety of that employee or others, which cannot be eliminated or reduced by a reasonable accommodation. No modification of the ADA or other statutes regarding medical privacy and civil rights are necessary.

### **Expand SNAP**

Regular access to healthy food is key to maintaining strong immune systems. We encourage the Senate to expand access to SNAP during the period of emergency, addressing needed flexibilities related to congregate meals as schools and other meal sites close, and an increase in funding. As many people's ability to keep and maintain employment will be impacted by both the business and transit closures, we ask that all work requirements tied to SNAP be lifted.

### **Voting**

AAPD is deeply concerned that the COVID-19 pandemic will reduce voter turnout amongst people with disabilities. Though many states are modifying current voting protocols to make vote by mail and other systems more widely available, states need funding and guidance to foster the development of accessible and flexible methods for voter registration. States must also remember that even in this crisis, they have to provide individuals with means to cast an independent and private vote. As online voter registration systems are adopted, states need funding and guidance to make them accessible, and further states must maintain accessible polling sites through early voting and on election day.

As the Rev. Dr. Martin Luther King said, "We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly." The fragile state of this "network of mutuality" has become all too apparent during the coronavirus outbreak. Though we may be vulnerable, we are not dispensable. In fact, we have critical experience to share in adapting to challenging and constantly changing situations affecting our health, employment, education, housing, and families--experience that all Americans will need in the days and weeks ahead. We are grateful for the urgency with which the Senate is moving to make sure that the American people never feel the worst of this pandemic, and we seek only to protect our community from the unintended but all too foreseeable impacts of discrimination. As Americans, we move forward together.

Please feel free to contact me at [mtown@aapd.com](mailto:mtown@aapd.com) should you have any questions.



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