

# United States Senate

WASHINGTON, DC 20510

April 20, 2020

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear President Trump:

This unprecedented crisis calls for action to protect those at the greatest risk of an adverse event as a result of COVID-19, particularly seniors and people with disabilities. Consistent with actions taken by departments and agencies across the federal government to ensure access to federal resources, health care and supportive services, we urge you to halt the development and implementation of rules and regulations that may negatively impact the populations at greatest risk of illness due to this virus.

The Centers for Disease Control and Prevention (CDC) reports<sup>1</sup> that 8 out of 10 deaths caused by COVID-19 occur in adults aged 65 and older. To protect these individuals, Congress has provided new resources and expanded authority to the Administration. At the same time, the Administration has a responsibility to ensure that its actions will not complicate or worsen matters during this time. To follow through on this responsibility, we implore you to withdraw all rules and regulations mentioned below and redirect all personnel otherwise working on these rules and regulations to coronavirus response efforts.

## Centers for Medicare & Medicaid Services (CMS):

Three rules currently under development at CMS would drastically limit access to health care services. As you know, ensuring access to appropriate and timely care is critical as the country works to combat the COVID-19 crisis, particularly for seniors and people with disabilities who are most at risk of serious health complications due to the virus. In order to meet this needs, any further action on the following rules must cease:

- *Medicaid and CHIP Managed Care Proposed Rule:* The proposed changes to the Medicaid and CHIP Managed Care Rule would limit access to health care providers, reduce the amount of information available to beneficiaries and shorten the amount of time beneficiaries have to appeal health care decisions. Advancing these policies under the best of circumstances is problematic; doing so during the COVID-19 public health pandemic could be dire. It has the likelihood of causing more people to go untreated and will contribute to the increased spread of the virus.

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<sup>1</sup> <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications/older-adults.html>

- *The Medicaid Fiscal Accountability Regulation (MFAR)*: MFAR would significantly change Medicaid program financing and supplemental payments, placing unprecedented restrictions on how states can raise their share of funding and potentially cutting reimbursements to hospitals and nursing homes. Health care providers are already experiencing significant challenges accessing the resources necessary to treat COVID-19 patients and contain the virus. Hamstringing states and cutting Medicaid funding would put more lives at risk.
- *The Requirements for Long-Term Care Facilities Regulatory Provisions to Promote Efficiency, and Transparency Proposed Rule*: CMS has proposed to eliminate regulations that require all nursing homes and other long-term care facilities to employ infection prevention specialists at least part time. With the knowledge that seniors have the greatest mortality from COVID-19 and how quickly the virus can spread through nursing homes, this proposal could put some of those most at-risk in grave danger.

### Social Security Administration (SSA)

Two rules under development at SSA will create unnecessary burdens for older adults and people with disabilities seeking earned and needed benefits. These rules would require additional medical visits and paperwork, while increasing anxiety around the possibility of losing benefits in a time already filled with uncertainty and distress. These proposals are short-sighted, particularly as we grapple with a pandemic.

- *Proposed Rule Regarding the Frequency and Notice of Continuing Disability Reviews (CDR)*: This proposal would deprive people with disabilities of the Social Security, Supplemental Security Income (SSI), Medicare, and Medicaid benefits that they are eligible for and rely on for survival. Under the proposed rule, SSA will increase the number and frequency of reviews of people who have previously been approved for Social Security benefits, forcing people to make additional medical appointments and engage in interactions outside of the home. We should be doing everything in our power to ensure the most at-risk populations can stay at home, consistent with CDC guidance.
- *Revising Evaluation of Vocational Factors in the Disability Determination Process Proposed Rule*: This rule would create stricter guidelines for new beneficiaries around age, education and work experience. These factors could put the benefits of over 500,000 Americans at-risk annually.<sup>2</sup> If approved, the plan would mark the first significant overhaul of the way age, education and experience are considered in evaluating disability since the criteria were established in 1978. Now is not the time to change the way America treats the people who need help the most.
- *Hearings Held by Administrative Appeals Judges of the Appeals Council Proposed Rule*: This rule would enable Administrative Appeals Judges (AAJs) to replace independent

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<sup>2</sup> <https://www.wsj.com/articles/trump-administration-weighs-tighter-requirements-for-disability-payments-11578686424>

Administrative Law Judges (ALJs) in a number of tasks that are currently conducted by ALJs alone. These two roles serve separate purposes and are not interchangeable. This rule will confuse the appeals process and erode due process for Americans who are appealing a denial of their application for Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) benefits by denying access to an impartial adjudicator that can fairly assess the Agency's decision and the evidence presented by the claimant. Addressing the needs of SSDI and SSI recipients throughout the COVID-19 public health emergency should take priority over this proposed change.

- *Removing Inability to Communicate in English as an Education Category Proposed Rule:* This rule, which is set to go into effect on April 27, would make it more difficult for individuals with limited English proficiency (LEP) to secure social security benefits. Previously, SSA considered a person with a disability's ability to communicate in English when evaluating whether they were able to work and thus qualify for disability benefits. With the proposed rule, language ability would not be considered in these evaluations. As the number of social security applications is expected to increase as a result of COVID-19, SSA should rescind this change to maintain current application processing procedures.

#### United States Department of Agriculture

The USDA has proposed three rules that would negatively affect older adults and people with disabilities from accessing the nutrition assistance needed during the COVID-19 crisis, including: The rules under development would create additional, unnecessary barriers and eligibility criteria for those in need, limiting access in a time of crisis.

- *The Revision of Categorical Eligibility in Supplemental Nutrition Assistance Program (SNAP):* This rule would make it significantly more difficult for seniors to qualify for the program based on asset tests and social security income levels.<sup>3</sup> The proposed rule would impose new limits on the optional state practice of using "broad-based categorical eligibility" (BBCE) to determine SNAP eligibility. For 20 years, this policy has enabled states to provide SNAP benefits to vulnerable individuals and families by allowing most households with low incomes to automatically qualify for SNAP without having to meet traditional SNAP income and resource limits. BBCE has allowed states to improve SNAP delivery while lowering administrative costs. Given that the COVID-19 pandemic has resulted in unexpected economic hardships for many, increasing the need for national food assistance programs, any proposed change to the eligibility criteria should be suspended. This will ensure that everyone who needs assistance is able to receive it.
- *The SNAP Standardization of State Heating and Cooling Standard Utility Allowances:* This rule would revise SNAP regulations to standardize the methodology for calculating standard utility allowances (SUA) by setting the standard at the 80th percentile of low-income households' utility costs in the state. The rule prevents states from applying current flexibility to consider everyday utility costs to set allowances that would cover

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<sup>3</sup> <https://www.cbpp.org/research/food-assistance/presidents-2021-budget-would-cut-food-assistance-for-millions-and-radically>

energy expenses during the highest energy usage months. The wide range in energy affordability among populations participating in SNAP indicates that the rules' proposed methodology for determining SUAs is both inappropriate and inequitable for calculating household benefits. Families who include people with disabilities and seniors will be disproportionately hit by this attack, in that the standard utility allowance helps those with higher utility costs afford to put food on their table. This rule pits the need for food against the need for a power wheelchair, ventilator or other lifesaving device at a time when people need greater assistance to combat the residual effects of COVID-19.

- *The Able Bodied Adult without Dependents (ABAWD) Work Requirement Rule*: This proposed rule places a 20 hours/week or 80 hours/month work requirement on those receiving SNAP who are able bodied between the ages of 18 and 49 without dependents. The proposed rule limits the amount of time ABAWD can receive SNAP benefits to three months in a 36-month period if the work requirements are not met. A state SNAP agency can request a waiver of the time limit in areas that have an unemployment rate of over 10 percent or lack sufficient jobs. This rule will be particularly damaging for anyone who is required to self-quarantine or is laid off due to shelter-in-place orders. Given that Congress has already waived the work requirements during the crisis and a federal court has issued an injunction order, this rule should be immediately withdrawn.

We must come together to protect seniors and people with disabilities during this time of uncertainty. We urge you to immediately halt any proposed rules and regulations unrelated to COVID-19 that would negatively impact these populations. Any changes to the abovementioned federal programs will only serve to create more chaos when the country is overwhelmed and looking to the government for answers and support.

Sincerely,

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Robert P. Casey, Jr.  
United States Senator

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Elizabeth Warren  
United States Senator

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Richard Blumenthal  
United States Senator

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Kristen Gillibrand  
United States Senator

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Sherrod Brown  
United States Senator

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Tammy Baldwin  
United States Senator

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Edward J. Markey  
United States Senator

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Kamala D. Harris  
United States Senator

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Bernard Sanders  
United States Senator

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Robert Menendez  
United States Senator

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Cory A. Booker  
United States Senator

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Amy Klobuchar  
United States Senator

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Jeanne Shaheen  
United States Senator

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Tammy Duckworth  
United States Senator

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Chris Van Hollen  
United States Senator

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Jack Reed  
United States Senator

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Tim Kaine  
United States Senator

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Mazie K. Hirono  
United States Senator