

United States Senate

WASHINGTON, DC 20510

August 5, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230, The Capitol
Washington, DC 20510

Dear Majority Leader McConnell:

As the coronavirus (COVID-19) pandemic continues, we write to urge you to ensure that policies to protect those Americans who are most at risk are included in the next COVID-19 relief package. Now, more than ever, Congress must affirm its commitment to securing the health and well-being of older adults, people with disabilities, children, Indian Tribes, communities of color, and low-income families. In one of our nation's darkest hours, we must advance solutions to fortify that commitment and to bolster the supports and services fundamental to Americans' health and economic security. The HEALS Act fails on every level to rise to the occasion and, in fact, undermines our historic commitment to these core groups of Americans.

The COVID-19 pandemic is a national public health and health care crisis that demands health care solutions. As detailed below, we implore you to ensure that any future COVID-19 legislation includes enhanced funding to sustain the Medicaid program, targeted solutions to save lives in nursing homes, and a dedicated investment in home and community-based services. This imperative cannot be overstated, as the lives of millions of Americans hang in the balance. Further, we urge you to abandon sweeping corporate immunity provisions included in the HEALS Act that will profoundly undercut the civil rights of millions, including people with disabilities, communities of color, workers and older adults.

We must strengthen Medicaid. Medicaid is the promise that health care will be available for 75 million low-income Americans, including 31 million children, 9 million people with disabilities, 6 million seniors, and 28 million adults.¹ The economic calamity brought about by the pandemic has only heightened the importance of this indispensable program, and the Urban Institute estimates 12 million additional Americans will turn to

¹ Medicaid—CBO's May 2019 Baseline. Congressional Budget Organization, May 13, 2019. <https://www.cbo.gov/system/files/2019-05/51301-2019-05-medicaid.pdf>.

Medicaid for access to affordable health coverage amid the pandemic.² At the same time, State revenues are plummeting, leaving States facing budget shortfalls that could amount to \$555 billion through 2022—a reality which, if unaddressed, could lead States to make dramatic cuts to Medicaid, just as they did during past economic downturns.³ To ensure States have the resources to combat COVID-19 and protect their citizens, Governors from all fifty States and a litany of patient advocates, disability stakeholders, health care providers and economists have called on Congress to further raise the enhanced Federal Medical Assistance Percentage (FMAP) and maintain access to essential Medicaid benefits. Failing to do so will likely force States to restrict eligibility, cut critical services, and slash payments for safety net providers, all of which would undermine access to care and jeopardize the health, safety, and economic security of low-income families. Additionally, these threats to discontinuing Medicaid services leave the Indian Health Service and Native Hawaiian health centers scrambling to continue operations and jeopardize access to health care services for American Indians, Alaska Natives, and Native Hawaiians when those services are most critical.

We must save lives in nursing homes. A national tragedy continues to unfold as COVID-19 sweeps through our nation’s nursing homes and other congregate settings. At least 62,000 residents and workers in long-term care settings have died from COVID-19, accounting for more than 40% of deaths nationwide.⁴ This profound loss demands a commensurate response. Congress must prioritize strategic investments in targeted solutions to save lives in nursing homes and other congregate settings, including intermediate care facilities and psychiatric hospitals. This will require funding to carry out proven practices in infection control and to ensure that facilities have adequate access to personal protective equipment and testing. Critically, these investments must be paired with policies to support front-line workers, hold facilities accountable and uphold resident rights. The HEALS Act falls far short of the meaningful investments and policies needed to address the crisis in these facilities.

We must invest in home and community-based services. The crisis in our nation’s nursing homes has amplified the importance of keeping older adults and people with disabilities out of congregate settings and allowing them to receive services safely at home. More than 2.5 million older adults and people with disabilities rely on Medicaid home and community-based services (HCBS), while more than 800,000 languish on wait lists.⁵ Absent additional funding from Congress, the direct service network that provides

² B, Garrett, and Gangopadhyaya A. “How the COVID-19 Recession Could Affect Health Insurance Coverage.” RWJF, May 28, 2020. <https://www.rwjf.org/en/library/research/2020/05/how-the-covid-19-recession-could-affect-health-insurance-coverage.html>.

³ Aron-Dine, Aviva, Kyle Hayes, and Matt. “With Need Rising, Medicaid Is at Risk for Cuts.” Center on Budget and Policy Priorities. Center on Budget and Policy Priorities, July 22, 2020. <https://www.cbpp.org/research/health/with-need-rising-medicare-is-at-risk-for-cuts>.

⁴ The New York Times. “More Than 40% of U.S. Coronavirus Deaths Are Linked to Nursing Homes.” The New York Times. The New York Times, June 30, 2020. <https://www.nytimes.com/interactive/2020/us/coronavirus-nursing-homes.html>.

⁵ Kaiser Family Foundation. “Waiting List Enrollment for Medicaid Section 1915(c) Home and Community-Based Services Waivers,” February 27, 2020. <https://www.kff.org/health-reform/state-indicator/waiting-lists-for-hcbs-waivers/?currentTimeframe=0>.

these vital services and supports will have no choice but to shut their doors. As HCBS wait lists grow, more older adults and people with disabilities will be forced into the very care settings that they are advised to avoid and where the COVID-19 death count continues to grow.

We must forgo harmful immunity shields. The HEALS Act erects insurmountable barriers to the courts related to COVID-19 claims and these barriers will disproportionately impact low-income workers of color, women, older adults, people with disabilities, and essential workers. We reject the broad liability provisions in the HEALS Act, which would disincentive businesses to take reasonable precautions to protect the public from the coronavirus and slam the doors of justice shut for workers, patients and nursing home residents, students and teachers, and countless others as the pandemic rages on. Instead of offering strong, consistent and science-based federal safety standards, the HEALS Act would immunize businesses by wiping out State laws designed to protect workers and public health. At the same time, it would decimate federal protections granted by landmark employment and civil rights laws, including the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the Genetic Information Nondiscrimination Act (GINA), the Occupational Safety and Health Act (OSHA), the Fair Labor Standards Act, and title VII of the Civil Rights Act of 1964. Putting the interests of wealthy corporations ahead of rectifying the anguish COVID-19 has brought down on hard-working Americans and their families is not a starting point for a negotiation—it is unconscionable.

We are eager to work with you and Senate Republicans to craft legislation to provide the health and safety protections families deserve, alleviate the economic calamity the country is experiencing, and relieve the profound suffering that this pandemic has wrought. We strongly urge you to prioritize the solutions outlined above and to abandon a fruitless campaign to secure sweeping liability shields. The health and well-being—indeed, the very lives—of millions of Americans depends on it.

Sincerely,

/s/

Robert P. Casey, Jr.
United States Senator

/s/

Tammy Duckworth
United States Senator

/s/

Elizabeth Warren
United States Senator

/s/

Ron Wyden
United States Senator

/s/

Patty Murray
United States Senator

/s/

Sheldon Whitehouse
United States Senator

/s/

Catherine Cortez Masto
United States Senator

/s/

Jeanne Shaheen
United States Senator

/s/

Kamala Harris
United States Senator

/s/

Richard J. Durbin
United States Senator

/s/

Mazie K. Hirono
United States Senator

/s/

Sherrod Brown
United States Senator

/s/

Kirsten Gillibrand
United States Senator

/s/

Tammy Baldwin
United States Senator

/s/

Chris Van Hollen
United States Senator

/s/

Tina Smith
United States Senator

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Michael F. Bennet
United States Senator

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Richard Blumenthal
United States Senator

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Tim Kaine
United States Senator

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Edward J. Markey
United States Senator

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Cory A. Booker
United States Senator

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Maria Cantwell
United States Senator

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Bernard Sanders
United States Senator

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Jeffrey A. Merkley
United States Senator

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Amy Klobuchar
United States Senator

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Christopher S. Murphy
United States Senator

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Brian Schatz
United States Senator

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Dianne Feinstein
United States Senator

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Margaret Wood Hassan
United States Senator

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Jack Reed
United States Senator

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Debbie Stabenow
United States Senator

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Benjamin L. Cardin
United States Senator

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Robert Menendez
United States Senator

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Mark Warner
United States Senator

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Gary C. Peters
United States Senator

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Thomas R. Carper
United States Senator

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Jacky Rosen
United States Senator

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Martin Heinrich
United States Senator

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Tom Udall
United States Senator

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Jon Tester
United States Senator

/s/

Christopher A. Coons
United States Senator

/s/

Patrick Leahy
United States Senator

cc: Charles Schumer, Senate Minority Leader