

# Health Policy Priorities for the New Administration and Congress

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## About Justice in Aging

Justice in Aging is a national nonprofit organization that uses the power of law to fight senior poverty by securing access to affordable health care and economic security for older adults with limited resources. We focus our efforts on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ individuals, people with disabilities, and people with limited English proficiency. We are committed to advocacy to address the long-standing, pervasive, ongoing, systemic racism that infects our culture, government, and systems of power.

We are asking the Biden Administration and 117<sup>th</sup> Congress to prioritize the urgent health care and long-term services and supports (LTSS) needs of low-income older adults by immediately enacting policies to address the COVID-19 crisis that has devastatingly and disproportionately harmed older adults, residents and staff of congregate care facilities, and communities of color. This response must be centered in equity and provide the foundation for a well-informed transformation of our system of long-term services and supports that addresses the effects of structural and systemic racism. Specifically, we are calling on the new Administration and Congress to ensure every older adult has access to the supports and services they need at home by making Home and Community-Based Services (HCBS) a mandatory Medicaid benefit, expanding Medicare coverage of LTSS, dental, vision, and hearing, and restoring and expanding Medicaid to ensure older adults can afford to access care.

## Administrative Priorities

We look forward to working with the Department of Health & Human Services to implement the priorities listed below as well as other initiatives the Administration identifies. To facilitate this work and an open dialogue, we request that the Administration establish regular stakeholder meetings between relevant offices and advocates for older adults and Medicare and Medicaid enrollees.

## Address Health Disparities and Inequities

Due to systemic injustices and discrimination that compound over their lifetimes, older adults from marginalized communities face barriers in accessing the care they need, and suffer poorer health as a result. Older adults of color, LGBTQ individuals, people with disabilities, people with limited English proficiency, and those with intersecting identities and characteristics face the most barriers and are most reliant on Medicare, Medicaid, and other public

programs to meet their needs. In order to ensure every person's right to access health care, services, and supports without discrimination and in their own language, we urge the Administration to take the following actions.

- **Reverse harmful rules and orders** that perpetuate or widen health disparities and inequities including executive order 13950 prohibiting federal agencies, contractors, and grantees from offering diversity, equity, and inclusion training, the public charge rule, the rollback of anti-discrimination protections in ACA 1557 rules, the rollback of nursing home regulations, and the interim final rule changing the Maintenance of Effort in the Families First Coronavirus Relief Act.
- **Rescind harmful Medicaid waivers and guidance** including the elimination of retroactive Medicaid coverage, work requirements, and block grants.
- **Improve language access**, including by translating critical notices and resources such as the Medicare & You Handbook into additional languages.
- **Collect and report comprehensive and intersectional data** on age, disability status, race, ethnicity, language, sex, gender identity, and sexual orientation to better understand how Medicare, Medicaid, and all health care programs are impacting individuals, especially those who are most marginalized.
- **Incorporate equity targets and benchmarks** in Medicaid, Medicare, and ACA health plan contracts and contracts with state Medicaid programs to reduce racial disparities in access to and quality of HCBS and other covered benefits.

## Prioritize Older Adults in COVID-19 Response

Despite knowing from the earliest stages of the pandemic that older age was a risk factor and 80% of all COVID-19 related deaths in the U.S. being among adults age 65 and older, much of the response has not centered and focused on older adults and others most at risk of serious illness and death. Therefore, we urge the Administration to make investments in ensuring older adults can get the care they need to remain living safely in their homes and prioritize the needs of older adults, particularly residents in congregate settings and Black, Latinx, Indigenous, Asian American, and Pacific Islander older adults who we know are experiencing disproportionate harm.

- **Include aging and disability** experts on all COVID-related boards and taskforces.
- **Form a COVID-19 taskforce** focused on addressing the ongoing crisis in the long-term care system.
- **Enforce civil rights protections** in state and health systems' crisis standards of care to ensure individuals are not denied treatment based on age or disability.
- **Ensure equitable vaccine allocation and distribution** that prioritizes older adults, communities of color, and residents in congregate settings and addresses vaccine hesitancy among communities of color and immigrants due to historic and ongoing racial and ethnic discrimination.
- **Bolster Home and Community-Based Services** by ensuring HCBS providers receive existing and future emergency relief funds, facilitating access to PPE, testing, and vaccination for direct care workers and family caregivers, and advocating for increased federal Medicaid funding to states for HCBS.
- **Address COVID-19 in residential congregate settings** by increasing oversight and enforcement, ensuring staff have access to testing, PPE, and vaccines, requiring the employment of a full-time infection preventionist and improving infection control efforts, restoring training requirements for nurse aides, and

improving visitation policies and communication with resident families and friends.

- **Collect and report comprehensive and intersectional COVID-19 data** across demographics, including race and ethnicity, and settings, including nursing homes, assisted living, group homes, and other congregate settings.
- **Evaluate public health emergency flexibilities** to determine the impact on older adults and people with disabilities and whether they should be extended, made permanent, or be rescinded after the emergency ends.

## Expand and Improve Access to Benefits

Medicare and Medicaid cover many essential services and supports and are the only source of health and long-term care coverage for older adults with limited income and wealth. Yet, gaps in scope, availability, and affordability of this coverage mean that many older adults cannot live in their own homes if they need help with activities of daily living or get basic care like dental, vision, and hearing. We urge the Administration to take the following actions and work with Congress to fill in these gaps.

- **Expand and invest in Home and Community-Based Services** by supporting efforts to make HCBS a required Medicaid benefit; ensuring Medicaid waiver services are being equitably allocated; allowing and expanding access to housing-related services through Medicaid; adopting a policy to allow for HCBS retroactive coverage; ensuring states are facilitating access to HCBS by fully implementing the spousal impoverishment protections for HCBS and expanding or starting the Money Follows the Person program; increasing and expanding the allowance for home maintenance, maintaining the public health emergency flexibility permitting payment for HCBS in hospital settings and Appendix K retainer payments, prioritizing full implementation of the HCBS Settings Rule; and expanding the definition of homebound for the Medicare home health benefit.
- **Make supplemental Medicare benefits equally available** to those in fee-for-service as in Medicare Advantage.
- **Expand access to Medicare Savings Programs** by encouraging states to expand eligibility criteria and outreach, participate in Medicare Part A buy-in, and improve provider payment.
- **Expand access to oral health, vision, and hearing services** to fee-for-service enrollees through demonstration authority and through appropriate coverage determinations.
- **Strengthen consumer protections and benefit coordination** for individuals dually eligible for Medicare and Medicaid and remove the barrier to necessary care for Medicare enrollees who are placed on “observation status” during a hospital stay.
- **Ensure access to ACA Marketplace coverage** by restoring enrollment outreach and assistance funding, extend the Marketplace open enrollment period to begin October 15 (the same as Medicare open enrollment), roll back expansions of short-term and limited benefit plans, and ease the transition from Marketplace to Medicare coverage by improving notices and extending relief from penalties for late Medicare enrollment.

# Legislative Priorities

We look forward to working with the new Congress to craft new legislation and improve existing legislation that prioritizes the health and long-term care needs of older adults with limited income and wealth, centers equity, and helps ensure that every person has the opportunity to age with dignity.

- **Enact COVID-19 relief** that meets the needs of low-income older adults and centers equity, increases the Medicaid Federal Medical Assistance Percentage (FMAP) and provides a targeted HCBS FMAP, maintains strong Maintenance of Effort provisions, requires intersectional data collection, addresses nursing home outbreaks, promotes transfers to HCBS and diversion, and does not provide immunity to businesses or providers.
- **Center equity in legislative initiatives**, including mandates for data collection and analysis that allow for intersectional reporting by race, ethnicity, sex, primary language, sexual orientation, disability status, gender identity, age, and socioeconomic status among federally supported health programs; enhancing language access and culturally competent care; and expanding access to Medicaid and the Marketplace for immigrants.
- **Expand access to HCBS** through legislation to make HCBS a required Medicaid benefit, making investments in HCBS, and making the HCBS spousal impoverishment protections and the Money Follows the Person program permanent.
- **Eliminate Medicaid estate recovery**, a policy that prevents families from escaping poverty and exacerbates the racial wealth gap by requiring states to recover certain Medicaid expenses from the heirs of a deceased Medicaid enrollee.
- **Strengthen Medicare** by expanding Medicare LTSS, oral health, vision, and hearing; addressing the solvency of the Medicare Trust Fund; resolving enrollment constraints, including delays for immigrants, people with disabilities, and people who are leaving incarceration; expanding eligibility for and improving Medicare Savings Programs and the Part D Low-Income Subsidy; improving benefit coordination for individuals dually enrolled in Medicare and Medicaid; and eliminating the barrier to necessary care for Medicare enrollees who are placed on “observation status” during a hospital stay.
- **Restore and strengthen the Affordable Care Act** by taking prompt action to moot the constitutional challenges presented in *California v. Texas* and restore any consumer protections that have been eliminated, expanding subsidies to increase affordability, and fixing the “family glitch” to ensure access to Marketplace plans when employer-provided insurance is unaffordable for a family.