SENIOR CARE PHARMACY COALITION

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Via Email: HCBScomments@aging.senate.gov

Senator Maggie Hassan
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Washington, D.C. 20510

Senator Sherrod Brown
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Senator Bob Casey
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Washington, D.C. 20510

Representative Debbie Dingell
116 Cannon House Office Building
Washington, D.C. 201515

Re: Home and Community Based Access Act Discussion Draft - Comments

Dear Senators Casey, Hassan, Brown, and Representative Dingell:

On behalf of the Senior Care Pharmacy Coalition ("SCPC"), thank you for the opportunity to review and comment on the Home and Community Based Access Act (HAA) discussion draft. We appreciate your ongoing commitment to assuring that America's seniors and all Americans with intellectual and developmental disabilities or severe mental illness who require long-term services and supports (LTSS) have equitable access to Medicaid-funded home-and-community based services. The discussion draft is only the most recent example of your commitment, for which we are grateful. We are confident your stakeholder engagement will help to accomplish the admirable goals you have set. In this spirit, we submit these comments for your consideration.

SCPC is the only Washington-based organization exclusively representing the interests of LTC pharmacies. SCPC represents 75% of all independent LTC pharmacies. Every day, our members operate in all 50 states and currently serve 850,000 residents in skilled nursing facilities (SNFs), nursing facilities (NFs), assisted living communities (ALCs), congregate living settings and at home.[1] Our members provide prescription drugs, wrap-around patient care services, and other specialized services both to seniors and younger disabled adults who need LTSS. We have a unique perspective on efforts to expand HCBS which we share below.

[1]"Skilled nursing facilities" are defined in the Social Security Act as facilities that offer Medicare Part A and Part C skilled nursing services to beneficiaries, 42 USC §1395i-3(a). "Nursing facilities" are defined in the Social Security Act as facilities that offer long-term care services to Medicaid beneficiaries (i.e., nursing homes), 42 USC §1396r(a). The Social Security Act also defines "long-term care facilities" as including SNFs, NFs, and "Intermediate Care Facilities for the Mentally Retarded (ICF/MRs)," 42 USC §1396d(d). "ICF/MR" has fallen into disuse in favor of terms like "residential care facilities," facilities for people with intellectual or developmental disabilities, or ICF/ID, which are terms we use throughout these comments unless specifically referring to the Social Security Act provision, in which cases we retain the ICF/MR terminology.

Executive Summary

LTC pharmacies provides provide clinal, patient care, and other specialized services designed to manage medication therapy for individuals who require LTC and LTSS. Their interventions improve outcomes and enhance quality of life. As more individuals who require HCBS receive services in settings other than traditional LTC facilities, equity demands that they similarly benefit from the medication management, clinical and other services LTC pharmacies provide to residents in LTC facilities. We therefore recommend that the draft HAA be modified to assure that older adults and younger adults living with disabilities who need HCBS are assured equitable access to LTC pharmacy services regardless of the setting in which they reside.

The LTC/LTSS Population

The draft HAA understandably focuses on the social and supportive needs seniors and people with disabilities need to maintain independence at home and in the community. Of course, these individuals also suffer from multiple chronic conditions and often have other health care needs – essentially, the need for long-term care in addition to the need for LTSS, and they often receive health care services through the Medicaid program as well. It is essential that policy makers integrate and coordinate both LTSS and health care services into the vision for a more robust HCBS benefit and into person-centered and person-directed care coordination plans to maximize the individual's ability to remain in home and community settings. This is true for both populations, although the details inflect differently for seniors than for younger people with intellectual or developmental disabilities.

Current law requires that states employ the same eligibility for admission to NFs and to HCBS programs. It is not surprising, therefore, that the current HCBS population shares similar characteristics and health care needs with the NF population. The typical NF resident is a woman in her 80s who suffers from multiple complex and chronic conditions, has some degree of cognitive impairment, and takes an average of 12-13 prescription medications each day. The health care profile of older adults in HCBS programs or on HCBS waiting lists is similar. Of course, both also have impairments in activities of daily living (ADLs) and instrumental activities of daily living (IADLs) as well.

One noteworthy difference, however, is that older adults in NFs and ALCs ***take fewer prescription medications*** than their counterparts living in the community:

- 36% of Medicare Part D beneficiaries living in NFs or ALCs and have impairments in 2+ ADLs take 11-20 prescription medications a month. For beneficiaries living in the community, 43% take 11-20 prescription medications a month.
- Medicare Part D beneficiaries age 65+ with 2+ ADLs residing in NFs and ALCs average 12 prescriptions a month, while the same group living in the community averages 14 prescriptions a month.[2]

[2] These statistics are based on SCPC's preliminary analysis of 2018 Medicare Current Beneficiary Survey data. Once we have finalized the analysis, we will provide it to Senators Casey, Hassan, and Brown, and to Representative Dingell.

Unfortunately, comparable data for individuals who are not enrolled in Medicare is not readily available. However, comparisons between Medicare beneficiaries 65+ with Medicare beneficiaries younger than 65 demonstrate that those under 65 have a much higher prevalence of cognitive or mental impairments (65% of those under 65; 29% of those 65+), are more likely to suffer from impairments in 3+ ADLs (25% of those under 65; 13% of those 65+), and have roughly the same prevalence of five or more chronic conditions (31% of those under 65; 13% of those 65+).[3] This data point to the comparable need for and reliance on prescription drugs to manage long-term health conditions, further supporting the need for LTC pharmacy services among younger adults with disabilities.

Policy should consider closely the reasons that individuals with substantially similar health care, long-term care, and social and supportive services needs would have noticeably different prescription drug utilization patterns, particularly given the importance of medication therapy to quality of life as well as quality of care. Given the similarities, it seems counter-intuitive that even similarly situated individuals living in the community would take more prescription medications than their counterparts living in facilities.

We believe the explanation lies in the more intensive medication management services LTC pharmacies provide to residents in NFs and ALCs, but that generally are not provided to individuals in the community. There is growing evidence to support this explanation. For example, LTC pharmacies have developed innovative transition of care programs designed to reduce medication avoid health care complications like unnecessary hospital readmissions by aggressively managing medication therapy as patients transition between care settings. LTC pharmacy interventions minimize adverse drug reactions, untoward drug-drug interactions, excessive doses of medications, and duplication of therapy, thereby enhancing quality of life, as well as improving health care.

LTC Pharmacy Services

Although LTC pharmacies historically served residents in federally defined LTC facilities and continue to do so, they also have expanded to serve residents in assisted living communities, senior living communities, and residential communities serving younger adults with disabilities. More recently, they increasingly serve individuals with LTC needs living in the community, although these efforts have been constrained by payers, particularly Medicare Part D Plans (PDPs) and the pharmacy benefits managers (PBMs) that administer PDPs and also administer the pharmacy benefits for younger adults with disabilities who receive Medicaid-funded pharmacy benefits.

SCPC estimates that 15% or more of the individuals its members serve are younger adults with disabilities, with the remainder older adults. Consequently, we are in the unusual position of serving both populations who would benefit from expanded HCBS.

LTC pharmacies, unlike retail or mail order pharmacies, provide not only prescription medications but also an array of patient care services and related specialized services designed to improve outcomes,

[3] Kaiser Family Foundation, Medicare's Role for People Under Age 65 with Disabilities (2016), available at https://www.kff.org/medicare/issue-brief/medicares-role-for-people-under-age-65-with-disabilities/.

avoid adverse drug interactions, assure medication adherence, minimize unnecessary drug utilization, and streamline packaging and delivery to assure product safety, and streamline medication administration. LTC pharmacies must provide these wrap-around services to residents in federally recognized LTC facilities (SNFs, NFs, and ICF/MRs), and typically extend these services to residents in assisted living communities and other congregate/residential settings.

These services not only distinguish LTC pharmacies from retail or mail order pharmacies, but also account for lower drug utilization among individuals in LTC facilities than demographically similar individuals living in the community. A partial list of these services include:

- Direct and ongoing consultation with patients and their families
- Direct and ongoing training and contact with facility nursing staff
- Pharmacist availability to patients to provide medication and patient care services 24/7/365 (even more important during COVID-19 in order to acquire and begin new medications for infected patients immediately)
- Direct placement of peripherally inserted central catheters and insertion of Midline and PICC lines
- Federally mandated medication therapy management for Part D Plans, including Comprehensive Medication Reviews and Targeted Medication Reviews
- Ongoing and detailed drug regimen reviews and drug utilization reviews
- Antibiotic stewardship and infection control
- Extensive controlled substance monitoring to reduce drug diversion potential in facilities
- Staff and resident education programs
- Discharge consulting services to ensure proper medication management to reduce unnecessary hospital readmissions.

LTC pharmacies, through the pharmacists they employ, also must participate on each resident's care planning team, which is responsible for developing and updating a person-centered care plan for each resident.

We emphasize these services, particularly medication therapy management, drug utilization review, and care planning because they are essential to effective care that enhances both health and quality of life for facility residents. Several SCPC members provide these services to individuals living in the community who receive HCBS services, including both senior and younger adults with disabilities. Data from these LTC pharmacies demonstrates improved outcomes for individuals receiving these services while reducing overall health care costs as well.[4]

[4] SCPC is in the midst of a case study analysis of member data concerning the provision of LTC pharmacy services to individuals in community settings, as well as other innovative care models such as PACE programs and Medicare Special Needs Plans in which some SCPC members participate. Once completed, we will share this analysis with Senators Casey, Hassan, and Brown, and Representative Dingell.

HCBS and LTC Pharmacy Services

The statutory provisions concerning Medicaid HCBS do not include LTC pharmacy services, nor does the draft HAA. In fact, the draft does not mention pharmacy services. Our primary recommendation is that LTC pharmacy services be included among the expanded services to which Medicaid beneficiaries are entitled in HCBS, as their needs warrant. More specifically, we recommend that the HAA be modified as follows:

1. Include LTC pharmacy services as an enumerated service available to eligible seniors and younger adults with disabilities who are eligible for HCBS.
2. Define LTC pharmacy as part of the conforming amendments to the Medicaid provisions of the Social Security Act.
3. Include LTC pharmacy representation on the Advisory Panel established in the draft HAA.

Recommendation: Include LTC Pharmacy Services in the HCBS Benefits Package.

The draft HAA includes a list of mandatory services that states must provide to HCBS beneficiaries. Adding LTC pharmacy services to this list will assure that eligible beneficiaries who need those services would receive them in community settings. The HAA is an opportunity to underscore the need to include LTC pharmacy services explicitly in Medicaid HCBS.

Implementing this recommendation presents legislative drafting questions, since LTC pharmacy is not defined in federal statute.[5] We discuss this issue in greater detail in our next recommendation. For purposes of this recommendation, however, we propose two options for consideration and further discussion.

We propose that the draft be modified to add a new subsection (xvi) to § 1905(hh)(2)(A) that states:

Option 1

> "(xvi) - Long Term Care Pharmacy Services, including medication reconciliation, drug regimen review, specialized packaging, medication therapy management, and transition management services consistent with the requirements of 42 USC § 1396r-(a)(4)(A)(iii) and related implementing regulations."

Option 2

> "(xvi) - Long Term Care Pharmacy Services, including medication reconciliation, drug regimen review, specialized packaging, medication therapy management, and transition management services consistent with the requirements of the Medicare Prescription Drug Program for residents of long-term care facilities."

[5] Our second recommendation is that the HAA add a definition of LTC pharmacy. Please reference that recommendation for additional details concerning current federal law.

We note that, in enacting minimum coverage requirements for insurance exchanges established in the Affordable Care Act (ACA), Congress recognized the importance of pharmacy services and included prescription drugs among the ten "Essential Benefits" that all Exchange plans were required to provide. *See* 42 U.S.C. § 18022. Similarly, the Medicare Prescription Drug statute, and its regulatory and sub-regulatory guidance, require the provision of LTC pharmacy services for those eligible patients with needs that mirror those of individuals currently eligible for Medicaid-funded HCBS programs. *See Medicare Prescription Drug Program Manual (the Part D Manual), Chapter 5, § 50.5.2.* Again, given the similar health care and medication management needs of residents in LTC facilities and participants in HCBS programs, it simply makes sense to offer the latter the same enhanced pharmacy services available to the former if the objectives include better health care outcomes and quality of life for seniors and younger adults living in the community. Furthermore, if the HAA does not explicitly address the importance and availability of LTC pharmacy services in HCBS, it will perpetuate an important driver of institutional biases that result in an easier path for facility-based services than for services at home or in the community.

The current waiver authority in subsection 42 U.S.C. § 1915(i) does not address pharmacy services. Therefore, we also recommend that the beneficiary eligibility assessment provision in the draft HAA include assessment to determine eligibility for LTC pharmacy services *in addition to* the services enumerated in the Medicaid statute currently, 42 U.S.C. § 1915 (i). The specific language used to accomplish this purpose should conform to the language added to include LTC pharmacy services among the benefits available to individuals who require HCBS.

We also recommend that the beneficiary eligibility assessment addressed in proposed section (hh)(4) also evaluate HCBS beneficiaries for eligibility for enhanced medication services, including eligibility for LTC pharmacy services. More specifically, we recommend that draft subsection 1905(hh)(4)I be amended to include the provision of LTC pharmacy services *in addition* to the services already enumerated in Section 1915(i). More specifically, we recommend the draft HAA provision be amended as follows:

> ''I PERSON-CENTERED CARE PLAN.—
>
> For purposes of subparagraph (A)(iii), a person-centered care plan described in this sub-paragraph is a written plan with respect to an individual that meets the requirements of section 1915(i)(1)(G)(ii) **and also account for the appropriate provision of medications, including the provision of LTC pharmacy services**. (Emphasis added to differentiate proposed new text.)

This addition will assure that individuals seeking HCBS will have their prescription drug utilization evaluated and they will receive LTC pharmacy services if needed.

Recommendation: Define LTC Pharmacy in the Medicaid Statute.

Although the Social Security Act defines LTC facilities, no definition of LTC pharmacy exists in federal statute. We recommend that the HAA add a definition of "LTC pharmacy" based on the services that LTC pharmacies provide. We believe that defining LTC pharmacy in statute will assure

that LTC pharmacy services are available to HCBS beneficiaries who need them, just as access to these services is assured for Medicaid beneficiaries residing in NFs and ICF/IDs.

The Social Security Act does specify that SNFs, NFs, and ICF/MRs provide medications and related pharmacy services to residents. CMS has defined the Pharmacy Services Requirements of Participation for SNFs, NFs, and ICF/MRs in regulation and sub-regulatory guidance.[6] In addition, the Part D Manual establishes ten criteria a pharmacy must meet to participate in Part D as a "network long-term care pharmacy."[7]

Last year, Senators Tim Scott (R-SC) and Mark Warner (D-VA) introduced the Long-Term Care Pharmacy Definition Act of 2020.[8] Representative Kurt Schrader (D-OR) introduced a companion bill in the House.[9] These bills defined LTC pharmacy based on the Part D Manual provision noted above, but also recognize that LTC pharmacy services should be available based on individual need for those services, regardless of the location in which the individual resides. This bill would add the definition to the Medicare Part D provisions of the Social Security Act.

We understand that Senators Scott and Warner will introduce the Long-Term Care Pharmacy Definition Act of 2021 very soon. Consequently, we respectfully defer offering specific text to modify the HAA until that legislation has been introduced so we may conform a Medicaid definition to the proposed Medicare definition the Senate will consider during the current Congress. As is the case with all provisions concerning LTC facilities, identical changes normally are made simultaneously to relevant provisions of both the Medicare and Medicaid provisions. Once the bill has been introduced, considering specific text regarding Medicaid provisions as part of the HAA will become timely.

Recommendation: Include LTC Pharmacy Representatives on the Advisory Panel.

The draft HAA creates an advisory panel to consider changes to the HCBS benefits package and make recommendations to the Secretary regarding such changes. Given the importance of prescription medications and effective medication management to the health and quality of life for seniors and younger adults with disabilities living at home or in the community and given the value of LTC pharmacy services to these individuals whether they live in LTC facilities or at home or in the community, it is crucial that the advisory panel consider the need for these services as part of their review. We therefore recommend that LTC pharmacy expertise be included on the advisory panel. In particular, we propose adding the phrase "LTC pharmacies" to a new subsection to § 1905(hh)(2)(B)(ii)(BB)as follows:

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[6] The Medicare and Medicaid statutes specify that SNFs, NFs, and ICF/MRs provide pharmacy services, 42 USC §1395i-3 (Medicare), §1936r Medicaid – NFs), and §1396r-3 (ICF/MRs). CMS has implemented these statutory provisions through regulation, 42 CFR § 483.45, and the State Operations Manual, https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf.

[7] The relevant Part D Manual provision may be found at https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R1PDB.pdf.

[8] Last year, the Long-Term Care Pharmacy Definition Act 2020 was denominated S. 4259. The text may be found at https://www.congress.gov/bill/116th-congress/senate-bill/4259/text?r=5&s=1.

[9] The House version of the Long-Term Care Pharmacy Definition Act of 2020 was denominated H.R. 7757 and may be found at https://www.congress.gov/bill/116th-congress/house-bill/7757.

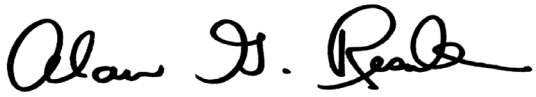
> "Representatives of beneficiary-led disability rights organizations, disability organizations representing families and providers, aging organizations, the Protection and Advocacy system, the Centers for Independent Living, health care providers, **long term care pharmacies,** the National Association of Medicaid Directors, the National Association of State Directors of Developmental Disabilities Services, the National Association of State Mental Health Program Direc ors, Advancing [sic] States, the Centers for Medicare & Medicaid Services, the Administration for Community Living, and other relevant representatives from local, State, and Federal home and community-based service systems." (Emphasize added to differentiate proposed new text.)

Conclusion

SCPC applauds your efforts to expand Medicaid-funded HCBS and to assure that seniors and younger adults with disabilities have access to the full range of health care services and LTSS to allow individuals to receive the care and services they need in the place they call home and in ways that help to keep them living in their homes and integrated into the community. We strongly support these objectives and believe that LTC pharmacy patient care services and related specialized services are essential to meeting these goals. We respectfully request that you include our recommendations in the next iteration of the HAA, and welcome ongoing discussions concerning the role of LTC pharmacies in HCBS expansion efforts.

Thank you for your consideration of these comments. We welcome any questions you may have. Please feel free to contact me at (717) 503-0516 or arosenbloom@seniorcarepharmacies.org.

Respectfully submitted,



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