July 21, 2021

The Honorable Charles Schumer
Majority Leader
U.S. Senate
322 Hart Senate Office Building
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
235 Cannon House Office Building
Washington, DC 20515

Dear Majority Leader Schumer and Speaker Pelosi,

We write to share our concern that announced plans to improve Medicare coverage appear to do little to fix systemic problems in existing coverage for mental health and substance use disorders (MH/SUD). The documented impact of the pandemic on Americans' mental health makes such an omission particularly alarming. While hearing, vision, and dental benefits are vital, Congress must also take action to extend the Mental Health Parity and Addiction Equity Act of 2008 to Medicare and make the changes to the Social Security Act necessary to end Medicare's longstanding discrimination against individuals with MH/SUDs.

Medicare's discriminatory coverage provisions for MH/SUD are neither isolated nor minor. The gaps embedded in Medicare stem from our nation's historic misunderstanding and frequent demonization of Americans who live with these conditions. Just as we can no longer tolerate other forms of prejudice and discrimination that have long been entrenched in our nation's laws and institutions, so too must we no longer tolerate discrimination in one of our nation's core federal programs.

Medicare's lack of adequate coverage for mental health and addiction treatment is even more problematic because the program serves as a benchmark for other forms of health coverage. For instance, gaps in Medicare are copied in TRICARE, and most commercial insurance plans rely on Medicare procedure codes, which do not exist for some MH/SUD services. Medicare also fails to cover mental health crisis services, which commercial coverage mirrors, inhibiting the expansion of the nationwide 988 mental health crisis system that Congress has taken pains to set up through the National Suicide Hotline Designation Act of 2020. Additionally, Medicare sets provider reimbursement trends across the U.S. health care system, so deficiencies in its rate-setting process, which tend to undervalue MH/SUD services, are replicated elsewhere.

Examples of coverage deficiencies embedded within Medicare include:

- **Not Subject to the Federal Parity Act.** Discriminatory coverage for MH/SUD treatment within Medicare is legal, including for Medicare Advantage plans.
- **190-Day Lifetime Limit on Inpatient Psychiatric Hospital Services.** No other medical condition has this limitation, which arbitrarily cuts off necessary treatment for individuals with serious mental illness.

- **Narrow Range of Covered Providers and Limitations on Practice.** Services from licensed mental health counselors, marriage and family therapists, and peer support specialists are not reimbursable under Medicare—and other mental health professionals face barriers—resulting in further limitations on access to MH/SUD care.[1]
- **Lacks Coverage of Intensive, Evidence-Based Interventions.** Medicare does not cover evidence-based, multi-disciplinary team interventions for people with the most severe MH/SUDs. This includes Coordinated Specialty Care for early psychosis, Assertive Community Treatment (ACT) teams, and medical nutrition therapy for eating disorders.
- **Limited Coverage of Levels of Behavioral Health Care.** Medicare does not cover residential care or intensive outpatient services for MH/SUD. It also inadequately covers services within each of the American Society of Addiction Medicine (ASAM) Criteria's five broad levels of substance use disorder care.[2]
- **No Coverage for Freestanding Community-Based SUD Treatment Facilities.** Medicare does not authorize payment for treatment in these facilities, which needlessly limits the availability of SUD treatment.
- **Restrictions on Telehealth.** Medicare's coverage of telehealth services is very limited, though some *temporary* flexibilities have been granted during the COVID-19 pandemic.

Just last week, the CDC released shocking new data showing a nearly 30 percent increase in overdose deaths in 2020. Survey after survey shows that our country's mental health has been negatively impacted by the pandemic.[3] Suicides among Medicare beneficiaries have long been overlooked, despite the fact that men over 85 have the highest risk of any group.[4] We believe that Medicare's structure perpetuates ageism by discounting the mental health and addiction struggles of far too many older adults. Eliminating these gaps and ensuring all Medicare beneficiaries receive parity-compliant MH/SUD coverage must be a top political priority.

We urge you to attempt to address as many of these issues together as possible, in a comprehensive manner. While fixing the gaps will not be without programmatic costs, the longstanding discrimination against individuals with MH/SUDs that is baked into the baseline should not now be used against them when they seek equal treatment. Furthermore, untreated

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[1] *Medicare Gaps in Mental Health Care*, 2021, https://www.thekennedyforum.org/app/uploads/2021/07/Medicare-Gaps-Fact-Sheet_finalversion.pdf.

[2] For an extensive description of Medicare's gaps in substance use disorder coverage, see: Ellen Weber and Deborah Steinberg, *Medicare Coverage of Substance Use Disorder Care: A Landscape Review of Benefit Coverage, Service Gaps and a Path to Reform*, Legal Action Center, February 1, 2021, https://www.lac.org/resource/medicare-coverage-of-substance-use-disorder-care-a-landscape-review-of-benefit-coverage-service-gaps-and-a-path-to-reform.

[3] Audrey Kearney, Liz Hamel, and Mollyann Brodie, "Mental Health Impact of the COVID-19 Pandemic, Kaiser Family Foundation, April 14, 2021, https://www.kff.org/coronavirus-covid-19/poll-finding/mental-health-impact-of-the-covid-19-pandemic/.

[4] Suicide Prevention Resource Center, "Older Adults," https://www.sprc.org/populations/older-adults.

and undertreated MH/SUDs are associated with higher overall medical costs and greater disability (a key Medicare eligibility category).

Finally, we urge Congress to resist separating mental health from substance use disorders. Millions of Americans struggle with this comorbidity, and addressing coverage for mental health OR substance use disorders alone will be doing them a grave disservice. Indeed, great effort was spent during debate and passage of the Mental Health Parity and Addiction Equity Act of 2008 to ensure the inclusion of addiction/substance use disorders, which were not included in the 1996 Mental Health Parity Act. We must not allow artificial divisions to be made moving forward.

Thank you for your important work to improve Medicare. We stand ready to assist in any way possible to bring parity to Medicare and end discriminatory coverage for Americans with MH/SUDs.

Sincerely,

Patrick J. Kennedy
Former U.S. Representative (D-RI)
Founder, The Kennedy Forum

Ashwin Vasan MD PhD
President and CEO, Fountain House
Asst. Professor, Columbia University

Bill Smith
Founder
Inseparable

Schroeder Stribling
President and CEO
Mental Health America

Daniel H. Gillison, Jr.
Chief Executive Officer
National Alliance on Mental Illness

Benjamin F. Miller, PsyD
President
Well Being Trust

Cc:

Chairman Bernie Sanders, U.S. Senate Committee on the Budget
Chairman Ron Wyden, U.S. Senate Committee on Finance
Chairman John Yarmuth, U.S. House Committee on the Budget
Chairman Richard Neal, U.S. House Committee on Ways and Means
Ambassador Susan Rice, Assistant to the President for Domestic Policy