GOVERNOR'S COUNCIL ON DISABILITIES & SPECIAL EDUCATION

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& SPECIAL EDUCATION
Patrick Reinhart, Executive Director
3601 C Street, Suite 740
Anchorage, Alaska 99503-5924
Main: 907.269.8990
Toll Free: 1.888.269.8990
Fax: 907.269.8995

June 27, 2017

The Honorable Lisa Murkowski
Member
United States Senate
522 Hart Senate Office Building
Washington, DC 20510

The Honorable Dan Sullivan
Member
United States Senate
702 Hart Senate Office Building
Washington, DC 20510

RE: The Better Care Reconciliation Act

Dear Senators Murkowski and Sullivan:

The Governor's Council on Disabilities and Special Education (the Council) fills a variety of federal and state roles, including serving as the State Council on Developmental Disabilities (SCDD) under the Developmental Disabilities Assistance and Bill of Rights Act. As the SCDD, the Council works with Senior and Disabilities Services (SDS) and other state agencies to ensure that Alaskans with disabilities and their families receive the services and supports they need, as well as participate in the planning and design of those services. The SCDD also works to educate and inform policymakers about the impacts of policies on Alaskans with disabilities. The Legislative Committee is a standing committee of the Council and is responsible for the day to day work to create change that improves the lives of people with disabilities and their families. Given this role, we write to share our serious concerns with the proposed Better Care Reconciliation Act (BCRA) and how it will impact Alaskans with disabilities. We also want to express our sincere appreciation for your continued support of Alaskans with disabilities.

We appreciate the opportunity to voice the Council's serious and significant concerns regarding the BCRA, which is being debated in the U.S. Senate. We ask you to consider how the proposed BCRA would impact the lives of many of the 23% of Alaskans who experience disabilities.

The American Health Care Act (AHCA) that passed the House of Representatives in May included provisions that eliminated mandatory consumer protections, eliminated Medicaid expansion, and changed federal funding of Medicaid to per capita-based block grants. Our previous letter to you of May 24, 2017, provided information about the devastating impact of the proposals in the House's AHCA on Alaskans with disabilities. The Council was encouraged to hear that Senator Murkowski anticipated drafting a Senate health care reconciliation bill that would not be based on the AHCA, but would be a more moderate health care proposal which protected consumers and preserved Medicaid expansion. Senator Sullivan, who has worked to improve the state's ability to respond to the opioid abuse epidemic, stated on June 21st that he wouldn't vote for a bill that made things worse for Alaskans.[1] On June 22, 2017, the 142-page draft BCRA was made available to the public and to most of the Senate. No public hearings or debate were scheduled and a vote on the bill was planned within seven calendar days of its release.

Contrary to our previous hopes, the Senate-proposed BCRA is not a more moderate health care proposal, and will in fact make things worse for Alaskans. Under the proposed BRCA plan, at least 22 million Americans will lose their health insurance coverage and 15 million fewer Americans will have Medicaid coverage by 2026.[2] An early analysis of the Congressional Budget Office (CBO) score estimates that in Alaska, 47,300 people will lose their insurance coverage and 17,200 fewer people will be covered by Medicaid by 2026.[3] The BCRA includes many of the negative features of the AHCA, including an age tax[4], weakened protections for people with pre-existing conditions through increased costs, elimination of mandatory essential health care benefits, and even deeper cuts to Medicaid through block grant funding and the phasing out of Medicaid expansion.[5] Even the addiction recovery programs that were championed by Senator Sullivan have been underfunded by the bill, and would not be sustainable without continuing Medicaid expansion funds. Worse still, the bill allows states to cut Medicaid funding for mental health treatment in 2019, thereby eliminating a crucial part of addiction treatment. The BCRA would create a health care crisis in Alaska that would be compounded by the state's current fiscal crisis.

The Lack of Transparency and Information

The Council first urges that no action be taken on the Senate reconciliation bill until the CBO completes an analysis of the bill's impact **past the 10-year budget window and provides a complete report on the effects of the steep cuts to Medicaid that occur after ten years.** Implementation of the provisions that cut federal Medicaid funding does not fully take effect until one year before the end of

[1] Sen. Dan Sullivan's Update on Healthcare Reform - June 21, 2017, https://youtu.be/TI773VjZSDg.

[2] Congressional Budget Office Report on H.B. 1628, Better Care Reconciliation Act of 2017, available at: https://www.cbo.gov/publication/52849.

[3] Center for American Progress, *Coverage Losses by State for the Senate Health Care Repeal Bill*, E. Gee, June 27, 2017, available at: https://www.americanprogress.org/issues/healthcare/news/2017/06/27/435112/coverage-losses-state-senate-health-care-repeal-bill/.

[4] Like the AHCA, the Senate bill would allow insurers to charge people over 50 years old up to five times the amount that younger adults pay for the same policy coverage.

[5] The BCRA also changes how subsidies for private insurance coverage are managed and who is eligible. Of the 19,000 Alaskans in the private insurance marketplace, 88% have subsidies. Only 1,280 Alaskans have been paying admittedly rising premiums, without subsidies.

the current CBO budget reporting window. The Senate cannot possibly know what the best course of action is with regard to the draft bill or proposed amendments without a report of **the longer-term impacts** on Medicaid. We also urge our Senate delegation to insist that public hearings be scheduled before a vote to allow Alaskans to hear the debate on amendments and to give them the opportunity to be part of representative government. The public hearing and comment process is one of the pillars of democracy, and is even more critical when the bill being proposed would repeal and replace a comprehensive public health program that has benefited so many Alaskans.

Medicaid Per Capita Cap/Block Funding

Under current law, the federal government pays states for a set percentage of the cost of health care for people on Medicaid, granting state programs the flexibility to offer Medicaid coverage as the eligible population shrinks or grows or as costs rise. The BCRA per capita caps would set limits on Medicaid expenditures for each state, and the federal government would decide how quickly the caps rise over time. States where actual costs increase more quickly than the increase to the cap will be faced with impossible choices about which needed health care programs are cut, how payments to medical providers are slashed, and which benefits or eligibility categories are reduced or eliminated. In the AHCA, per capita caps for nondisabled children and nonelderly adults would grow at the rate of medical care inflation, while the caps for the elderly and disabled grow at the faster rate of medical care inflation-plus-1-percentage-point. **The Senate bill cuts to Medicaid take effect more gradually but ultimately would go further than the House's $800 billion in cuts.** The BCRA would first cap Medicaid funding in 2021 and apply a nationally-averaged growth rate. Beginning in 2025, the growth rate would be steeply reduced. The reduction in the growth rate would sharply increase the gap between actual state costs and federal funding. The CBO estimates that by 2026, $772 billion dollars will have been cut from Medicaid under the proposed BCRA.

As you know, Alaska will be uniquely and drastically impacted by the Senate bill's proposed caps on Medicaid. The rate of increase of health care costs is much higher in our state than other states. From 2000-2011, Alaska's Medicaid spending on a per capita basis grew more rapidly than the national trend rates advanced in any capped funding proposal, and much faster than most other states for the spending specifically on the elderly and people with disabilities.[6] Accordingly, a reduction in the growth rate of the federal funding cap has a more devastating impact in Alaska than anywhere else in the country. The BCRA's reduction of the rate of increase will result in cuts in in enrollment and benefits that would be devastating for many Alaskans including the elderly, children, and people with disabilities and at a high cost to the state.[7] To stay under a per capita cap Alaska would be required to cut its

[6] Alaska's average annual per enrollee spending growth was above average in all eligibility groups from 2000 – 2011: 8.3% for the aged (3rd in nation), 5.4% for disabled (14th in nation), 5.8% for children (22nd in nation), and 5.7% for adults (36th in nation). Alaska's Medicaid spending growth on these groups significantly outstripped per capita GDP (2.9%), CPI (2.5%), and medical CPI (4%) during that period. Centers for Medicare and Medicaid Services, *National Health Expenditure Data*, https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsStateHealthAccountsResidence.html, last accessed 6/26/2017.

[7] While Alaska, as a low-population density state, would be exempted from an additional reduction in the growth rate that other states with high per-enrollee costs would be subject to, the exemption would do little to ameliorate the drastic result of caps and cuts in Alaska.

Medicaid program spending by $929 million in federal and State dollars between FY 2020 and 2026, with a federal funds loss of $473 million.[8]

Particularly at risk are optional Medicaid benefits which are the heart of Alaska's Medicaid program. Alaska has a cohesive plan for enabling seniors and people with disabilities to remain in their homes and communities and has chosen to offer optional services such as personal care, case management, person-centered habilitation, and supported employment. The fact that they are not services which states are required by Medicaid law to provide makes them particularly vulnerable for reductions by both federal and state administrations when undergoing budget reductions. Nearly all the services which support 185,000 Alaskans; people with disabilities, seniors, and families are optional services provided through Home and Community Based Service (HCBS) waivers as well as Personal Care Attendant (PCA) services. In Alaska, Home and Community Based Services (HCBS) waivers allow people who would otherwise need an institutional level of care to live in their home or community and receive the care they need. These HCBS waivers are approved by the federal government and allow Alaska Medicaid to provide expanded services to people who meet the eligibility criteria for the specific waiver. PCA services provide support for about 4,000 Alaskan seniors to age in place and enable individuals with disabilities to remain in the community where they can be contributing members of society. **Cuts to these cost-effective and successful optional services may lengthen waiting lists for HCBS and force people out of their homes and communities and into more expensive institutions which states are required by Medicaid law to provide.** Without these optional services, people with disabilities are at increased risk of institutionalization and unwarranted placement in nursing homes.

The BCRA's per capita caps on Medicaid funding would also mean that Alaska's state budget process for health care spending would become a gamble on unforeseen future social, demographic, or environmental factors that drive actual Medicaid costs higher than foreseeable trends might. Historical Medicaid spending shows substantial random variation from year to year.[9] In our state, we have seen cyclical spikes in whooping cough infection in rural Alaska and the rapid rise in urban opioid abuse. The availability of new treatments, such as the effective but expensive medicines to treat Hepatitis C, can cause large variations in a state's yearly health expenditures.[10] Alaska's state budget process would have to absorb these large variations through changes in revenue generation and/or health care service cuts, and would have to plan expenditures two years before the state would know the amount of federal Medicaid funding available.[11] This would destabilize an important part of our state's economy[12],

[8] Alaska Department of Health and Social Services (DHSS), *Impact on Alaska of Medicaid Provisions in the House-Passed AHCA: Preliminary Analysis, June 21, 2017***,** available at**:** http://dhss.alaska.gov/News/Documents/press/2017/Impact-on-Alaska-of-Medicaid-Provisions-in-House-Passed-AHCA_6-21-2017.pdf.

[9] Brookings, *Effects of the Medicaid per capita cap included in the House-passed American Health Care Act***;** L. Adler, M. Fiedler, and T. Gronniger, May 10, 2017, available at: https://www.brookings.edu/research/effects-of-the-medicaid-per-capita-cap-included-in-the-house-passed-american-health-care-act.

[10] Id.

[11] AK DHSS, Id., http://dhss.alaska.gov/News/Documents/press/2017/Impact-on-Alaska-of-Medicaid-Provisions-in-House-Passed-AHCA_6-21-2017.pdf.

[12] Health care employment makes up 8.2% of the total employment in Alaska's economy. Kaiser Family Foundation, *Total Healthcare Employment – 2015*, available at: http://www.kff.org/other/state-indicator/total-health-care-employment, last accessed 6/26/2017.

and would impede the development of sustainable long-term programs needed for improving and maintaining the health of Alaskans with disabilities.

The Senate bill phases in the most drastic effects of the BCRA on Medicaid over several years. However, merely delaying the impact of such extreme cuts does not reduce their devastating impact on Alaskan residents. Our state will see a 76% increase in its senior population by 2030, and an even larger increase of seniors over the age of 85. A growth rate reduction to Medicaid in 2025 will hit our population just as our foreseeable need for Medicaid funding to care for our elders will be increasing.[13] Additionally, the BCRA would begin a three-year phase-out of Medicaid expansion in 2020, with a sharp reduction in federal support in 2024 which would likely make expansion no longer effective for Alaska. This appears to be less draconian than the immediate reductions of the House bill**. However, the phase-out of expansion in the BCRA would coincide with the reduction in the growth rate on the Medicaid cap in 2025, creating a perfect storm of increased need and decreased funding while contracting an industry that was *formerly* projected to create 52,563 jobs for Alaskans by 2024.**[14]

Waiving Essential Health Benefits Requirements Will Harm Alaskans with Disabilities

As currently drafted, the BRCA allow states to waive existing Essential Health Benefits requirements in private insurance coverage, which would disproportionately harm people with disabilities. Individuals with disabilities must have access essential health benefits that include the range of services and treatments needed for their conditions, including prescription drug benefits, substance use treatment, mental health treatments, and preventive services. For example, the recent tragic rise in opioid abuse in Alaska will put increased emphasis on the need for essential health benefits that include substance abuse and mental health treatment. Titles III and V of the Comprehensive Addiction and Recovery Act (CARA), legislation that was introduced and championed by Senator Sullivan in 2016, authorizes funding for demonstration treatment programs to innovate methods for fighting the opioid epidemic.[15] Though the BCRA does not allow insurers to exclude individuals from coverage because of pre-existing conditions, it does allow them to deny coverage for a broad range of benefits that would be needed by people with pre-existing conditions, including mental health treatment to support addiction recovery. **Without a guaranteed minimum standard of benefits, Alaskans could find themselves without access to insurance that covers the cost of the substance use treatment methods developed under the CARA, or needed mental health treatment. A lack of required minimum essential benefits will ultimately harm individual health, community health and drive up the costs of health care.**

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[13] Projected population of Alaskans over the age of 65 by 2030 is approximately 140,000. See, Alaska Department of Labor and Workforce Development, *Alaska Population Projections 2015 to 2045*, http://live.laborstats.alaska.gov/pop/projections/pub/popproj.pdf, last accessed 6/26/2017.

[14] Alaska Department of Labor and Workforce Development, *Alaska Economic Trends, October 2016; Forecast for Industries and Occupations 2014 to 2024,* http://www.labor.state.ak.us/trends/oct16.pdf, last accessed 6/26/2017.

[15] The Comprehensive Addiction and Recovery Act (CARA), Public Law 114-198, available at: http://www.cadca.org/comprehensive-addiction-and-recovery-act-cara.

The BCRA Allows States to Waive Other Important Consumer Protections in Private Insurance Coverage

In addition to the waiver of the mandatory essential health benefits requirement, the Senate bill also makes other important changes to state innovation waivers, which are included in section 1332 of the Affordable Care Act (ACA). Under the ACA, in order to waive a consumer protection provision, a state has to show that its alternative plan would allow it to cover as many people, with coverage as generous, without increasing federal spending. Under the Senate bill, to get a waiver, a state doesn't have to demonstrate anything about coverage.[16] Instead, it just has to show that the plan won't "increase the federal deficit." Once a state makes that showing, the bill is explicit that the Secretary of Health and Human Services "shall" approve the plan. The state must provide a description of the alternatives it proposes, but the description has no legal bearing on whether the DHHS can grant the waiver. If the state's plan doesn't increase the deficit, the Secretary has to approve it. Also under ACA, a state has to pass a law in support of the proposed waiver, which meant legislatures had to give their approval before the state could experiment with novel approaches to health insurance. **The Senate bill would cut legislatures out of the equation. Governors, together with their insurance commissioners, could devise new health care plans on their own.** The federal government must then review the waiver request on an expedited basis. The BCRA expands the duration of waivers from five years to eight years, during which time, it may not be cancelled. The procedural changes to section 1332 found in the BCRA remove important guardrails on the grant of state innovation waivers and expose Alaskans to even greater risk of decreased insurance coverage.

Examples of potential section 1332 waivers that states could get approved -- by showing only that they did not increase the federal deficit – are the exclusion of adult children as dependents on a parent's policy, the removal of caps on out-of-pocket spending for insurance plans, and the position that *no* benefits would be considered essential and therefore insurers should be able to impose lifetime and annual limits on *all* services.[17] In states with waivers, insurers would be able to sell separate policies for benefits not covered in their core plan offerings. These supplemental policies would likely be sold at very high premiums and enrollment would almost exclusively be by those with pre-existing conditions. The result in Alaska would be a return to world where people with pre-existing conditions pay far more for the coverage they need, or are unable to afford adequate coverage at all.

Continuous Coverage Amendment

An amendment to the BCRA would allow discrimination against Alaskans with pre-existing conditions through its continuous coverage requirement. The requirement states that if a person has a lapse in coverage of 63 days or more, they must wait 6 months before obtaining private insurance. Individuals with serious conditions or disabilities, such as cancer, mental illness, and diabetes, are more likely to experience gaps in healthcare coverage due to changes in employment status related to periods

[16] Brookings, *Changes to state innovation waivers in the Senate health bill undermine coverage and open the door to misuse of federal funds,* J. Levitis, June 23, 2017, available at: https://www.brookings.edu/blog/up-front/2017/06/23/changes-to-state-innovation-waivers-in-the-senate-health-bill-undermine-coverage-and-open-the-door-to-misuse-of-federal-funds/.
[17] Id.

of illness or intensive treatment that may leave them unable to work. The BCRA would allow insurers to penalize enrollees with gaps of coverage two or more months long by excluding them from the individual insurance market for 6 months. **This will shut the door on healthcare coverage for Alaskans who experience disabilities with episodic periods of acuteness and recovery, right when they need it the most.**

Funds for Insurance Marketplace Stability

The BCRA provides money primarily aimed at insulating insurance companies from losses and reducing the costs of coverage for high-risk individuals. The Centers of Medicare and Medicaid Services would have flexibility in awarding these funds. One fund worth $50 billion would go directly to insurers to "address coverage and access disruption and respond to urgent health care needs." The other, with a total value of $62 billion, would flow through the states for them to use in a variety of ways. They could write-down the premium costs for high-risk individuals, subsidize out-of-pocket payments for policyholders, provide money to hospitals, and otherwise inject money to keep markets more predictable for insurers.

Alaska has experience supporting the state private insurance marketplace through reinsurance.[18] That experience demonstrates that the funds allocated in the BCRA for the purpose of stabilizing insurance marketplaces is insufficient, and that all proposed stability funds should pass through the state insurance association rather than being paid directly to insurers. In 2016, our state faced an emergency with the individual health insurance market when one of our two remaining insurance companies exited the market.[19] In the face of a possible 42 percent premium rate hike[20] from the remaining insurer, the state administration and legislature acted to create a temporary fund by using assessments collected from every insurance policy sold in the state. The one-year fund, which reimbursed the private insurer for high-cost procedures for eligible insureds, was set at $55 million. Using the fund to off-set the predicted expenditure for high-cost procedures, the insurer was able to reduce its 2017 rate increase to 7.5 percent.[21]

Clearly, the $112 billion dollars earmarked in the BCRA to stabilize markets across the entire country is not enough to address the factors that contribute to insurance market failure. Additionally, the funds should be paid directly to states, where an integrated plan and public oversight of insurance

[18] Alaska Legislature, *Alaska's Individual Health Insurance Market: Reinsurance is a Path Forward to Achieve Sustainability*, available at: http://www.akleg.gov/basis/get_documents.asp?session=29&docid=63829.

[19] Alaska Journal, *Insurance officials hope federal waiver will cover reinsurance costs*, T. Bradner, 4/05/2017, available at: http://www.alaskajournal.com/2017-04-05/insurance-officials-hope-federal-waiver-will-cover-reinsurance-costs#.WVKlkP6GPmU.

[20] The Alaska individual insurance market, which numbered about 20,000 in 2016 (it has since dropped to about 18,000) wasn't big enough to absorb the costs of the 800 individuals who were in the state's high risk pool before implementation of ACA. The single insurer averaged a loss of $7.7 over three years. Id.

[21] Saving the Individual Market in Alaska: The Alaska Reinsurance Program, Report to the Board January 11, 2017, available at: https://www.wship.org/Docs/WSHIP%20Alaska%20Reinsurance%20Program%20Presentation%202017%2001%2011%20FINAL.pdf.

payments would better meet the dual purposes of the addressing coverage and access disruption and responding to urgent health care needs.

Thank you for your attention to this critical matter. Should you have questions about this letter, please feel free to contact the Governor's Council on Disabilities and Special Education.

Respectfully,

Amy Simpson, Chair
Governor's Council on Disabilities & Special Education

Patrick Reinhart, Executive Director
Governor's Council on Disabilities & Special Education