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LEGISLATIVE BRANCH



Congress of the United States
House of Representatives

July 3, 2013

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Ms. Marilyn Tavenner
Administrator
Centers for Medicare and Medicaid Services
Attn: CMS-6037-P
7500 Security Boulevard
Windsor Mill, MD 21244-1849

Dear Ms. Tavenner:

I would like to express concern about a proposed definition of Medicaid home and community-based services (HCBS) settings that could eliminate many assisted living communities as a long-term care option for Medicaid beneficiaries in Nebraska. The Centers for Medicare & Medicaid Services' (CMS) latest proposed regulation defining HCBS settings, while much improved over previous versions, could seriously restrict access to assisted living services for many Nebraskans receiving Medicaid services.

While I appreciate CMS's work on refining the definition and the need to ensure that HCBS are non-institutional in nature and provide resident-centered care, several issues remain that could seriously impair the ability of America's seniors to access assisted living care. The proposed rule could result in fewer living options because assisted living facilities that happen to be located near existing long-term care facilities and other institutional settings could be excluded from the Medicaid program. Options that would be jeopardized include continuing care retirement communities (CCRCs) and multi-level campuses. Many elderly residents prefer to live where health care services are readily available. Further, multi-level campuses allow spouses with varying health care needs to continue to live near each other.

The proposed definition is problematic in that it presumes provider-controlled HCBS settings are institutional in nature. This presumption is too restrictive to allow seniors access to many resident-centered options. Further, many married couples who chose multilevel campuses could be forced to either move or be separated if they rely on Medicaid funding.

Another part of the proposed rule that could threaten access to assisted living services for thousands of Medicaid beneficiaries is wording that, in effect, could forbid states to allow residents to share units. While offering Medicaid beneficiaries single-occupancy units is a laudable goal, many states allow residents to share units so the state can afford to pay the cost of room and board, which Medicaid by law cannot pay for. Unless Congress provides a funding stream to supplement room and board costs, banning the sharing of units would dramatically shrink the supply of assisted living available to Medicaid residents. Such a policy would also drive up federal and state costs as the vast majority these residents would be forced to live in more costly nursing homes and other institutional settings.

While I greatly appreciate the work that CMS has done in changing the proposed definition in response to previous public comments, I still have concerns with the new proposed language and its potential to eliminate important choices of settings for America's seniors. While it is critical to ensure that HCBS settings offer resident-centered services and are integrated into the community, it also is important to make sure that Medicaid beneficiaries enjoy a wide variety of choices and are not forced into institutional settings. This could well be the outcome for many seniors and people with disabilities if assisted living/residential care settings are eliminated from Medicaid. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Fortenberry". The signature is fluid and cursive, with a large initial "J" and "F".

Jeff Fortenberry
Member of Congress