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August 8, 2013

Ms. Marilyn Tavenner
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Ms. Tavenner:

I am writing in response to the Centers for Medicare and Medicaid Services' (CMS) proposed rule, which defines Medicaid home and community based services (HCBS). While I appreciate the work CMS has done to improve this proposed rule over previous versions, there is concern that this definition could eliminate many long term care facilities as care options for Medicaid beneficiaries in Nebraska and across the United States. I urge you to again consider the feedback you have received in response to your proposal from those who would be affected by any future action on this matter.

Specifically, I have heard concerns about the proposed rule's "rebuttable presumption" that HCBS settings near institutional settings are institutional in nature. I understand that family members with varying care needs often choose multi-level campuses that offer different levels of care in order to ensure each individual receives the appropriate care, while remaining near one another. Additionally, many individuals feel more comfortable living in areas where health care services are nearby and easily accessible. The proposed rule's presumption about the location of HCBS could limit access to resident-centered options for these types of individuals.

I believe any HCBS eligibility standard should focus on the quality and nature of services, rather than discriminate against a valued community care provider based on its location. In a rural state like Nebraska, access to care is already limited; therefore I hope you will explore other language to ensure that providers who are successfully integrating individuals into the community can continue to do so.

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I appreciate your work on this issue and recognize the importance of providing care that facilitates the individual's full access to the greater community. When I served as a Governor and now as a United States Senator, I have worked to help make these community care options available to individuals who can benefit from them. Therefore, I urge you to continue to carefully consider the comments you receive to ensure that this regulation promotes access to community care for individuals rather than restricts the care options these individuals need and deserve.

Sincerely,



Mike Johanns
United States Senator