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July 8, 2013

Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 314G
200 Independence Avenue, SW
Washington, DC 20201

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 the state of Iowa. 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 of the approximately 139,000 residents receiving Medicaid services in these settings nationally. (See: File Code CMS-2249-P2, Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Setting Requirements for Community First Choice, Proposed Rule, Federal Register, May 3, 2012.)

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. These issues include a bias against location near institutional settings and against the sharing of units. The proposed rule is problematic 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 in close proximity to each other.

Bias against location near an institutional setting. The proposed definition includes a "rebuttable presumption" that provider-controlled HCBS settings, are institutional in nature. While the latest version of the proposed definition is more reasonable than the previous version, which would have simply banned facilities in proximity to institutions or those offering services targeted to a specific disability, it is still too restrictive to allow seniors access too many important 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. I

believe the sentence establishing the “rebuttable presumption” should be deleted. If a provider adheres to the other standards articulated in the proposed rule and develops a resident-centered service plan, then this requirement is unnecessary.

Requiring single occupancy. 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 force states to require single occupancy units. While offering Medicaid beneficiaries single-occupancy units is a laudable goal, many states allow residents to share units in order to afford the cost for 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 nursing homes and other institutional settings that are far more costly than assisted living communities.

Another major issue is whether facilities specializing in care for Alzheimer’s patients will still be allowed to have secure boundaries if they participate in Medicaid. There are many other components of the proposed definition that could create barriers to beneficiaries accessing assisted living services, as well, including requirements to adhere to landlord tenant law that conflict with assisted living regulations in many states.

While I greatly appreciate the work that CMS has done in changing the proposed definition in response to previous public comments, I still have serious concerns with the new proposed language and its potential to eliminate important choices of settings for America’s seniors. This is especially the case for elderly Medicaid beneficiaries who often have a preference for living in proximity to health care facilities since many multiple health conditions along with long term care needs. Given the strong response to the proposed rules published last year, it is especially important to gather additional comment and refine the definition further before finalizing it. 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 tens of thousands of seniors and people with disabilities if assisted living/residential care settings are eliminated from Medicaid.

Sincerely,



Congressman Dave Loebsock

Iowa’s Second District