

United States Senate

WASHINGTON, DC 20510

February 2, 2010

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Sebelius:

We are writing to request that you consider imposing an administrative delay on the implementation of the Medicare outpatient therapy caps. These arbitrary financial caps are already resulting in restricted access to rehabilitation service.

As you know, the Balanced Budget Act of 1997 created two financial caps on the amount of outpatient Medicare Part B therapy services that Medicare covers per beneficiary per year. Since that time, Congress has consistently acted to prevent the therapy caps from denying Medicare beneficiaries access to rehabilitation services through moratoriums and the creation of a clinically-based exceptions process.

At this point in time, Congress has not passed a comprehensive health reform bill. And, certain extender provisions, including the extension of the therapy caps exceptions process, have been stalled. Accordingly, the current Medicare therapy caps exceptions process expired, and the financial caps went into effect on January 1, 2010.

We are concerned that implementation of the Medicare outpatient therapy caps is causing undue hardship on Medicare beneficiaries, particularly for those who are recovering from a stroke or a debilitating injury such as a hip or joint fracture. We have already received reports that beneficiaries with severe rehabilitation needs have already exceeded the financial caps. In fact, one national provider has reported that as of February 1, 2010, approximately 1,050 of its patients across the country will hit the caps. This number is expected to grow to more than 4,000 patients by February 28, 2010. We are concerned that implementation of the therapy caps could result in longer lengths of stay and a shift in patients and costs to inpatient settings.

We recognize that the Centers for Medicare and Medicaid Services (CMS) recently issued a memorandum to the U.S. House of Representatives and the U.S. Senate concerning expiring provisions of law, which said:

“Providers have two options for what to do with claims affected by these provisions beginning on January 1. A provider may continue to submit claims for these services, which will be processed under current law (and may later be processed if new legislation extends the expiring provisions). Alternatively, a provider may choose to hold claims for a period of time to see whether legislation is enacted, and avoid reprocessing.”

While we appreciate this memorandum, many rehabilitation providers are unable to hold claims for substantial periods of time.

It appears that CMS has the authority to delay implementation of the therapy caps. Instead of implementing the therapy caps on January 1, 2003, as required by Section 4541(a)(2) of the Balanced Budget Act of 1997 (P.L. 105-33), CMS elected to delay implementation of the therapy caps until September 1, 2003 (Transmittal AB-03-097). Accordingly, we would like you to consider imposing an administrative delay on the implementation of the Medicare outpatient therapy caps in 2010.

Thank you for your efforts to ensure that Medicare beneficiaries have access to necessary rehabilitation services. We appreciate your consideration of this request and look forward to your prompt response.

Sincerely,


JOHN ENSIGN
United States Senate


BLANCHE LINCOLN
United States Senate


CHUCK GRASSLEY
United States Senate