

# United States Senate

WASHINGTON, DC 20510

July 25, 2011

Ms. Barbara Edwards  
Director, Disabled & Elderly Health Programs Group  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
Mail Stop S2-14-26  
7500 Security Boulevard  
Baltimore, Maryland 21244

**RE: CMS proposed rules: “Medicaid Program: Community First Choice Option,”**  
**(*Federal Register*, Feb. 25, 2011) and “Medicaid Program; Home and Community-Based**  
**Services Waivers” (*Federal Register*, April 15, 2011)**

Dear Ms. Edwards:

We are writing to express our concern regarding two proposed rules that attempt to establish a federal definition for Medicaid community-based settings. These rules will reduce long term care options for Medicaid beneficiaries. If these rules are not changed, they would force the majority of the approximately 130,000 Medicaid beneficiaries currently living in assisted living communities to be transferred to a nursing home setting.

Of particular concern is the CMS proposal in both rules that would disqualify a community-based provider, such as assisted living or a group home, from participation in Medicaid by virtue of being on or near a property containing an institutional setting. Many seniors choose to live in settings offering multiple levels of care (e.g. continuing care retirement communities), and states have chosen to allow Medicaid to pay for these. At a time when we have more seniors than ever before, CMS should not restrict the options available to seniors and the states.

The several other conditions that assisted living communities must meet in order to qualify as a Medicaid community-based setting under the April 15 proposed rule would decrease access and choice for Medicaid beneficiaries. Of most concern is the requirement that the residents have a lease. Assisted living communities across the country use resident agreements because they offer a unique combination of services and housing. This and the other requirements you propose, such as having lockable doors and forbidding settings targeted to a particular diagnosis, could disqualify assisted living communities in several states from delivering care for the most vulnerable seniors, including those with Alzheimer’s disease.

While we agree with the intent to integrate Medicaid beneficiaries into the larger community and have person-centered care, the proposed definitions would have the opposite effect. Many of these older Medicaid beneficiaries do not have the option of returning to their home, or their needs can no longer be met through home health care alone. Denying access to assisted living

and group home settings would force older low-income residents into nursing homes and other institutional settings because, in most cases, there is no other housing with services for them.

Assisted living and group homes have become major long term care options for Americans of means, and many states have chosen to expand these options to older low-income Medicaid beneficiaries. We would like to underscore our concern that these two proposed rules would threaten our constituents' choice and access to assisted living communities and strongly urge you to defer to the states the determination of long-term care options for its citizens.

Thank you for your prompt attention to this important matter. We are happy to furnish additional information or please feel free to have your staff contact one of our offices.

Sincerely,

Boucari

Lamar Alexander

Susan Collins

Ron Wyden

Olympia Snowe

Jerry Moran

Chuck Grassley

cc: Donald M. Berwick, M.D.  
Administrator  
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