

United States Senate
WASHINGTON, DC 20510

November 19, 2007

The Honorable Max Baucus
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Minority Member
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Chairman Baucus and Ranking Member Grassley:

We are writing to again express our strong opposition to the recently proposed regulatory action by the Centers for Medicare and Medicaid Services (CMS) that drastically cuts Medicaid funding by reducing school-based and rehabilitative services for children and adults with disabilities.

Thanks to your leadership, both the Senate and the House approved a moratorium on an overwhelmingly bipartisan basis in the Children's Health Insurance Program reauthorization. Unfortunately, without a legislative override of President Bush's veto of the bipartisan CHIP bill, this moratorium would not go into effect. Therefore, we urge you to address our concerns with these policies in the Senate Finance Medicare package or in another appropriate legislative vehicle this year.

Recent data about the Medicaid rehabilitative services option illustrates the potential impact of these unilateral CMS actions. An August 2007 study published by the Kaiser Family Foundation found that 47 states obligated \$4.9 billion through the rehabilitative services option in FY 2004 to provide community-based care to 1.46 million Medicaid beneficiaries. Seventy-three percent of recipients have mental health diagnoses, including debilitating mental illnesses such as schizophrenia and bipolar disorder. The remaining twenty-seven percent of beneficiaries under the option include children and adults with developmental disabilities and persons living with cancer, heart disease, diabetes and HIV/AIDS.

Because this state option is such an important link to community living for these vulnerable Americans, we were alarmed by a new CMS Notice of Proposed Rule Making (72 Fed. Reg. 45201) that prohibits people with developmental disabilities from participating in the program at all. The NPRM also proposes an ill-defined "intrinsic element" standard that provides the agency with unprecedented discretion to deny reimbursement for such essential services as community skills training, day programs, and employment related services supervised by health professionals.

The NPRM also scales back rehabilitative services provided to Medicaid eligible youngsters in foster care, and children with disabilities participating in the Individuals with Disabilities Education Act. In addition, CMS proposes the elimination of a congressionally-mandated protection that authorized 19 states to provide day habilitation services to people with disabilities under the rehabilitation option.

In order to address these concerns, we ask you to consider a two-year moratorium that would prohibit CMS from promulgating new rules relative to both rehabilitative and school-based services. This two-year moratorium on the implementation of these rules preserves the Finance Committee's jurisdiction to engage in a thoughtful consideration of the rules and their impact on the provision of services to millions of children and adults with mental illnesses and developmental disabilities. We believe that including a temporary moratorium in the Senate Medicare bill or another legislative vehicle is the best way to avoid potentially devastating mental and physical health outcomes for our country's most vulnerable citizens.

We strongly urge you to include a two-year moratorium on rehabilitation services and school-based administration, transportation, and medical services in the Senate Medicare package, or in another appropriate legislative vehicle this year. Thank you for your attention to this important matter.

Sincerely,

Bernard Sanders Bob Casey, Jr. Susan M. Collins
BERNARD SANDERS ROBERT P. CASEY, JR. SUSAN M. COLLINS

Mary G. Lane Allen DeBevoise
Jon Lurie Joe Reschovsky
Bob Minner Tom Harkin

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