

United States Senate

WASHINGTON, DC 20510

July 7, 2006

Dr. Mark B. McClellan
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building – Room 314G
200 Independence Ave, S.W.
Washington, D.C. 20201

Dear Administrator McClellan:

We are writing you to express serious concerns about plans by the Center for Medicare and Medicaid Services (CMS) to issue regulations restricting the scope of reimbursable services under the Medicaid rehabilitation services option (Title XIX, Section 1905(a)(13)) as part of a larger budget plan to reduce Medicaid spending by \$5.9 billion over the next five years.

We are concerned, as you are, about any misuse of Medicaid funds for purposes other than those intended by Congress and the States. We applaud your efforts to root out waste, fraud, and abuse in the Medicaid program. However, any new rules that CMS promulgates should maintain the agency's fiduciary responsibility while not inadvertently limiting essential services available to those who truly need them.

As you may know, over 40 States use the rehabilitation option to reduce institutionalization and finance an array of community-based services, including services for children with developmental disabilities, individuals with HIV/AIDS, adults with severe mental illnesses and the frail elderly. During congressional deliberations surrounding the recently enacted Deficit Reduction Act (P.L. 109-171), CMS proposed a statutory definition that would have denied reimbursement for care provided under the rehabilitation option if those services were "an intrinsic element" of another federal, state or local program. Congress rejected the proposed change and it was not included in the DRA because it was not clear what services would be affected.

It has come to our attention that CMS intends to use the same "intrinsic element" test in the forthcoming rehabilitation option rule, despite Congress concerns during consideration of the DRA in 2005. People with disabilities rely upon this option to finance essential services like community living skills training, day programs and employment-related services supervised by health professionals. We are concerned the new CMS standard would restrict Medicaid funding for these services and shift fiscal responsibility for them to hard pressed State programs, or beneficiaries themselves who can ill-afford them. We believe changes, improperly conceived, would drive up institutionalization rates, increase emergency room utilization and lengthen hospital stays.

We have several questions:

- 1.) What is the scope of the proposed “intrinsic element” test? Specifically, what community-based services would no longer receive reimbursement under the Medicaid option?
- 2.) Has CMS examined the impact on beneficiaries if these changes go into effect?
- 3.) What is CMS doing to mitigate the expected impact of these new rules?

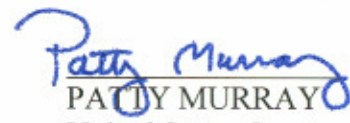
Thank you for your continued efforts on behalf of the Medicaid program. We look forward to your response.


Sincerely,



TOM HARKIN
United States Senator


JEFF BINGAMAN
United States Senator


FRANK LAUTENBERG
United States Senator


PATTY MURRAY
United States Senator


DEBBIE STABENOW
United States Senator


RON WYDEN
United States Senator