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MINNESOTA

COMMITTEES:  
AGRICULTURE, NUTRITION,  
AND FORESTRY  
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AND TRANSPORTATION  
ENVIRONMENT AND PUBLIC WORKS  
JOINT ECONOMIC COMMITTEE  
JUDICIARY

United States Senate  
WASHINGTON, DC 20510

February 26, 2010

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

Dear Secretary Sebelius:

Minnesota's congressional delegation requests your attention to an urgent issue that threatens the financial stability of rural hospitals throughout our state and around the country. Specifically, we request that the Department of Health & Human Services rescind the new interpretations and attempt to clarify physician supervision requirements that were contained in the Outpatient Prospective Payment System (OPPS) final rule for calendar year 2010, as well as any retrospective enforcement of those interpretations. Your quick actions to remedy this issue will help ensure that Medicare patients in Minnesota, as well as those in rural communities throughout the United States, will continue to have access to safe, high-quality outpatient services delivered in the most cost-effective and efficient manner possible.

In the final OPPS rule, which went into effect January 1, the Centers for Medicare & Medicaid Services (CMS) intended to do no more than clarify previous policies. However, this rule contained significant changes to longstanding policies and practices regarding the level of supervision required for outpatient therapeutic and diagnostic services to qualify for payment under Medicare. In the few weeks since the rule took effect, it has caused significant concern and financial pressure for hospitals, especially critical access hospitals (CAHs), in Minnesota and throughout the country.

The new policy essentially mandates that a physician or certain non-physician practitioners be immediately available at all times for numerous outpatient services, including observation services. These new requirements are not mandated in statute, nor did Congress intend for them to be gleaned from existing law. Even more concerning, CMS imposed these new mandates without any identified clinical need or discernment between the few medically complex services that naturally require more hands-on participation by a physician and the numerous routine, low-risk procedures that have been performed safely for decades by trained health care professionals working under a physician's general supervision and direction if not always in his/her physical presence.

This new policy directly conflicts with CMS's conditions of participation for CAHs. When designing the conditions of participation, CMS recognized both the severe shortage of available physicians in rural communities and the Medicare patients' interests in having access to outpatient services in their communities without the added costs, risks and challenges that would

result from traveling great distances. Accordingly, CMS thoughtfully wrote the conditions of participation so that they did not require a physician to be on a hospital's campus at all times. Instead, the conditions of participation require a CAH to ensure that a physician is immediately available by phone and can respond in person within 30 minutes.

Given the need to contain and reduce health care costs, the continuing health care workforce shortage in rural areas throughout the country, and the longstanding history of safe delivery of outpatient services in CAHs prior to this new shift in policy, the undersigned senators and representatives from Minnesota urge you to rescind the new interpretation in the OPPS CY2010 rule pertaining to physician supervision.

Sincerely,

Amy Klobuchar

Al Franken

Jill Osterman

Tommy Luoma

Betsy McCollum

John Kline

Mitchell Bachmann

Keith Ellison

L. J. Van

Eric Paul

Cc: Charlene Frizzera, Acting Administrator, CMS