United States Senate
WASHINGTON, DC 20510

April 12, 2011

Via Electronic Transmission

Dr. Donald Berwick
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue
Washington, DC 20201

Dear Dr. Berwick:

We are contacting you to express our concern that the Centers for Medicare and Medicaid Services (CMS) have misinterpreted legislative intent in terms of implementing Section 144 of PL 110-275. That section of the Medicare Improvements for Patients and Providers Act (MIPPA) establishes the specific benefit categories of cardiac and pulmonary rehabilitation.

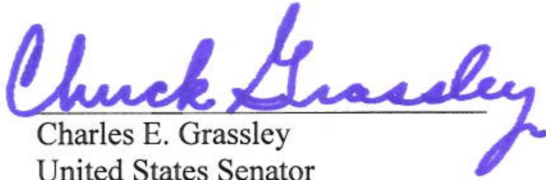
It has come to our attention that CMS has determined that the legislative language in that section of law precludes non physician practitioners (NPPs) from acting in place of a physician in a supervisory capacity to meet Medicare requirements. As you know, the concept of physician supervision was addressed most recently in the Hospital Outpatient Prospective Payment System final regulations for 2011. Those regulations permit virtually all hospital outpatient services delivered in Critical Access Hospitals (CAHs) and other small rural hospitals to be supervised by physicians *or* NPPs in accordance with state law, medical staff policies, etc. Cardiac and pulmonary rehabilitation are singled out to exclude those programs from this important flexibility. In addition, the moratorium that was placed on physician supervision requirements for CAHs and other small rural hospitals does not apply to these services.

When the Senate considered this legislation, our goal was to enhance access to these important services, not create a roadblock. For example, CAHs have the flexibility of staffing their Emergency Departments with NPPs as long as they are in compliance with the Medicare CAH conditions of participation. The final rule now in place departs from this standard and in effect, places a more stringent requirement on routine outpatient rehabilitation services than it does for the staffing of Emergency Departments. Rural hospitals, especially CAHs, already face significant challenges in meeting physician and NPP staffing requirements. Accordingly, it appears that the requirements in the final rule will result in cardiac and pulmonary rehabilitation no longer being provided in many of these facilities. This is certainly not the scenario we intended.

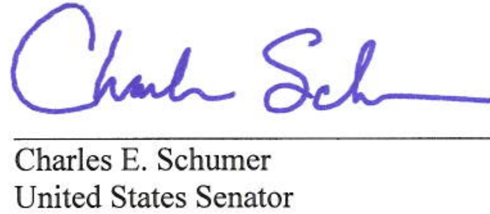
This regulation also affects non CAH institutions. For urban institutions that enjoy the resources of NPPs to provide important services, this regulation is also a barrier to efficiencies associated with staffing in these institutions.

CMS' current interpretation will have a negative impact on health care for beneficiaries in rural areas and will create a barrier to efficiencies in urban institutions. This certainly does not reflect congressional intent and we strongly recommend that CMS reverse this interpretation of the current law.

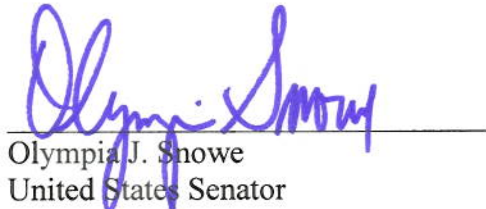
Sincerely,



Charles E. Grassley
United States Senator



Charles E. Schumer
United States Senator



Olympia J. Snowe
United States Senator

Mike Crapo
United States Senator