

CENTER FOR HEALTH CARE LAW

October 18, 2011

The Honorable Patty Murray
Co-Chair, Joint Select Committee on Deficit Reduction

The Honorable Jeb Hensarling
Co-Chair, Joint Select Committee on Deficit Reduction

The Honorable Max Baucus
The Honorable Xavier Becerra
The Honorable Dave Camp
The Honorable James E. Clyburn
The Honorable John Kerry
The Honorable Jon Kyl
The Honorable Rob Portman
The Honorable Pat Toomey
The Honorable Fred Upton
The Honorable Chris Van Hollen

Members, Joint Select Committee on Deficit Reduction

Dear Co-Chairs and Members:

The nation is facing a difficult challenge regarding the future of Medicare and Medicaid. These programs are essential to the health of millions of children, seniors, and disabled Americans of all ages. However, the debate surrounding federal government spending and the growing deficit raises concerns that the very existence of these programs is threatened. What is crucial at this point is that the Congress take a balanced and thoughtful approach to financially stabilizing these programs in a way that relies on innovation, smart spending, and targeted reforms. You and many other members of Congress have long demonstrated an ability to devise solutions that achieve these ends.

The Center for Health Care Law, a public interest law firm that has provided legal counsel to Medicare and Medicaid beneficiaries for nearly 25 years, commends the Congress for recognizing the value of these programs while understanding that their future depends on sensible reforms. It is time to build on the learning gained since the inception of these programs in 1965 and to take advantage of the experiences that demonstrates what works to meet today's health care needs and challenges.

Both programs face greatly increasing obligations to meet the needs of the chronically ill of all ages. Strengthened community-based care stands out as a proven and readily available solution. Nevertheless, proposals have surfaced that will erect barriers to care in the home at a time when its value should be fully exploited rather than discouraged. One such proposal is the institution of Medicare home health copayments.

In 1972, your predecessor members of Congress saw the wisdom and value of home health care and eliminated any beneficiary cost obligations in dropping the application of the Part B deductible and per visit coinsurance. Since that time, Congress has repeatedly rejected attempts to reinstate some form of copayments, most recently in 2003 when such was considered as a partial way to finance the new drug benefit. Then, as now, home health care barriers are counterproductive to a fiscally sound Medicare program.

The people that would bear the burden of these copayments are the least likely capable of affording any more out-of-pocket expenses. Most are women, averaging 84 years of age, and living on not much more than Social Security payments. They do not have supplemental insurance. They can stay in their own homes because of the help they get from their families and friends along with the essential skilled nursing and therapy under the Medicare home health benefit. Without this support, the only alternatives are no care with the resultant complications, hospitalizations, and endless other health care interventions or a likely permanent placement in a nursing home paid by Medicare and/or Medicaid.

Severe cutbacks in support of Medicare home health services were instituted as part of the Balanced Budget Act of 1997. Those reforms backfired as Medicare increased spending on skilled nursing facility care, hospitalizations, and physician services at the same time that utilization of home health care dropped precipitously from 3.5 million users to just over 2 million in a two-year period.

A Medicare home health copayment will have a comparable result. A recent study published in the New England Journal of Medicine demonstrated that even a small increase in an outpatient copayment can increase inpatient spending by three times more than was saved in outpatient spending. A Medicare home health copayment will lead to the same unintended harmful consequences.

There are better alternatives to a home health copayment in the form of targeted actions to reduce fraud, waste and abuse. All beneficiaries are harmed by copays, especially those who deny themselves needed care because of unaffordable out-of-pocket costs.

Payment rate cuts to providers also are not a good solution to Medicare and Medicaid spending concerns. The correlation between payment rates and access to care is undeniable. Again, targeted action against overpaid or overutilizing providers is much better than across-the-board rate cuts.

The Center for Health Care Law respectfully urges you to reject any barriers to home and community based care as part of your efforts to find remedies for growing Medicare and Medicaid expenditures. Instead, we recommend that you embrace home care as part of the solution for these programs.

Very truly yours,

A handwritten signature in cursive script that reads "William A. Dombi".

William. A. Dombi
Director