



November 29, 2007

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

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

Re: Request for Inclusion of Disability Priorities in Medicare Package

Dear Chairman Baucus and Ranking Member Grassley:

As you continue to move forward with a Medicare package to address the pending physician payment cut in 2008, the undersigned members of the Consortium for Citizens with Disabilities (CCD) are writing to respectfully request that you consider the inclusion of several important legislative priorities for individuals with disabilities in the legislative package.

The CCD is a coalition of national disability organizations working together to advocate for national public policy that ensures the self determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

1) Medicaid Rehabilitative and School-Based Services: CCD members strongly support inclusion of a two-year moratorium on implementation of final Medicaid regulations that would severely restrict access to community-based rehabilitation and school-based services for adults and children with disabilities.

As you know, the Centers for Medicare and Medicaid Services (CMS) issued proposed regulations in August restricting Medicaid coverage of rehabilitative services and school-based services, and are poised to promulgate the final regulations at any time. The Kaiser Family Foundation estimates that 47 states use the Medicaid rehabilitative services option to provide vital community-based rehabilitation services to adults and children with disabilities. This option has proven to be an important tool for states to prevent institutionalization of recipients with developmental disabilities and mental illness. Unfortunately, CMS' proposed regulations would severely undermine the States' ability to serve some of the nation's most vulnerable individuals in a community-based setting.

Thanks to your leadership, on a bipartisan basis, the Senate and House approved a two-year moratorium on these policy changes in the Children's Health Insurance Program Reauthorization Act of 2007; however, without an override of the pending Presidential veto of the CHIP bill, this moratorium will not go in effect. We urge you to include a two-year year moratorium in your Medicare package this year.

2) Medicare Inpatient Rehabilitation: *The undersigned CCD members support the Preserving Patient Access to Inpatient Rehabilitation Hospitals Act of 2007 (S. 543) and urge you to include the bill's provisions addressing Medicare's 75% Rule in your Medicare package.*

The 75% Rule is a classification tool that requires inpatient rehabilitation hospitals and units to maintain an arbitrary percentage of patients with one of thirteen specified diagnoses in order to maintain their status under Medicare. The impact of the rule is essentially a quota system where patient admission is based on an individual's diagnosis alone, rather than their overall rehabilitation need. For many individuals with disabilities and chronic conditions, access to intensive inpatient rehabilitation care can often mean the difference between quickly returning to their home and community or being diverted into a long-term, less intensive setting such as a nursing home.

As you know, CMS is currently phasing-in the 75% Rule and the compliance rate is now at 60% for many hospitals and units and 65% for several others. Stopgap legislation, S. 543, would freeze the compliance threshold at 60% indefinitely and would maintain current treatment of comorbidities under the rule. We urge you to incorporate the provisions of S. 543 in your Medicare package in order to allow for appropriate access to inpatient rehabilitation care for individuals with disabilities.

3) Medicare Outpatient Rehabilitation: *CCD members oppose Medicare's current cap on outpatient rehabilitation therapy services and urge you to address the therapy caps in your Medicare package this year.*

As you know, Medicare places a monetary cap on outpatient physical therapy and speech language pathology, and occupational therapy. Fortunately, since the caps were established in 1997, Congress has enacted a series of moratoria and, most recently, an exceptions process which is set to expire at the end of this year. Ironically, those with the greatest need for outpatient therapy services will be harmed the most if the caps are permitted to be fully implemented.

CCD supports the Medicare Access to Rehabilitation Services Act (S.450), which would remove the Medicare therapy caps from statute altogether, and urge you to include S. 450 in your Medicare package. However, we also understand that the current exceptions process generally allows appropriate access to outpatient rehabilitation services for those with significant rehabilitative needs. Therefore, alternatively, we support an extension of the current exceptions process for at least two years in your Medicare package while efforts continue to find better solutions to reforming the payment system for outpatient therapy.

4) Improvements to Medicare Part D: *The undersigned members of CCD urge you to include changes to the Medicare Part D drug benefit to further assist people with disabilities in accessing critical life sustaining and life saving medications in the your Medicare package.*

CCD supports several provisions in the House-passed CHAMP Act that would make Medicare prescription drug coverage more fair and accessible to people with disabilities. Such changes include increasing the asset limit for eligibility for the Low-Income Subsidy (LIS), codifying the authority for CMS to ensure coverage of "all or substantially all" of the medications in the 6 classes of clinical concern, allowing plans to cover benzodiazepines and barbiturates, waiving of cost sharing for certain dual eligibles with disabilities, permitting more beneficiaries to switch plans in cases of mid-year formulary changes, and allowing AIDS drug assistance programs to count toward TrOOP.

While many of these Part D provisions are very modest changes with no or very little cost, they would have a substantial impact on protecting individuals with disabilities. We urge to include such changes in your Medicare package.

5) *Mental Health Parity in Medicare:* *The undersigned CCD members urge you to include a repeal of Medicare's higher, 50 percent co-insurance rate for outpatient mental health services in your Medicare bill.*

Recent research indicates that over 25 percent of Medicare beneficiaries have mental health conditions and individuals with disabilities who rely on Medicare have even higher rates of mental health conditions – some 59 percent have mental disorders and 37 percent have severe disorders. The 50 percent co-insurance that applies to outpatient mental health services (instead of the usual 20 percent co-insurance) not only makes mental health services unaffordable for many Medicare beneficiaries, it also discourages providers from accepting patients with Medicare due to concerns that they will not pay the higher co-insurance. Limiting access to outpatient mental health care under Medicare has also resulted in much higher utilization of expensive inpatient care (including emergency rooms and urgent care clinics) among Medicare beneficiaries compared to other populations.

A provision repealing the 50 percent co-insurance rate for mental health care under Medicare was passed by the House earlier this summer as part of the CHAMP Act and we urge you to include this provision in your Medicare package as well.

6) *Competitive Bidding Exemption for Complex Rehab and Assistive Technology:* *The undersigned CCD members support an exemption for complex rehab and assistive technology from the Medicare competitive bidding program and urge you to incorporate such an exemption in your Medicare bill.*

Medicare is currently in the process of implementing the national competitive acquisition program for durable medical equipment (DME) and has, unfortunately, chosen to include complex rehab and assistive technology in the first round of the competitive bidding process. Complex rehab and assistive technology are often highly customized products which are fitted specifically for the individual user. These users often have severe physical disabilities. We fear that competitive bidding for these products will threaten appropriate access to individualized devices and technology on which many people with disabilities depend.

The Medicare Access to Complex Rehabilitation and Assistive Technology Act of 2007 (H.R. 2231), which has been introduced in the House, would exempt complex rehab and assistive technology from the national competitive bidding program and we support inclusion of the bill's provisions in your Medicare package this year.

7) *Maintaining Access to Power Wheelchairs:* *Finally, the undersigned CCD members urge you to refrain from including a provision in your Medicare package, first seen in the House's CHAMP Act, which threatens access to power wheelchairs under Medicare for individuals with mobility impairments.*

Section 608 of the House-passed CHAMP Act would eliminate the initial purchase option for power wheelchairs under Medicare, requiring that individuals, instead, rent their devices for thirteen months prior to title transfer. We fear that requiring wheelchair suppliers to purchase power wheelchairs from the manufacturers and then essentially finance these devices to individuals over a thirteen-month period creates an enormous disincentive for suppliers to serve Medicare beneficiaries. Additionally, as a result of

this policy change, we believe beneficiaries may be evaluated for wheelchairs based on their diagnosis and prognosis, rather than their current mobility needs.

Therefore, we request that this harmful policy change not be included in your Medicare package.

In conclusion, CCD members hope that as you continue to progress with the development of a Medicare package this year, you will consider it an opportunity to address the important issues mentioned above for individuals with disabilities and chronic conditions. If you have any questions, please contact the CCD Health Task Force Co-Chairs: Liz Savage, The Arc and United Cerebral Palsy Disability Policy Collaboration (202-783-2229- savage@thedpc.org), Kathy McGinley, National Disability Rights Network (202-408-9514, Kathy.McGinley@ndrn.org or Peter Thomas, ACCSES, (202-466-6550).

Thank you for your consideration.

Sincerely,

ACCSES

Alexander Graham Bell Association for the Deaf and Hard of Hearing

American Association of People with Disabilities

American Association on Intellectual and Developmental Disabilities

American Dance Therapy Association

American Medical Rehabilitation Providers Association

American Music Therapy Association

American Occupational Therapy Association

American Physical Therapy Association

American Therapeutic Recreation Association

American Network of Community Options and Resources

APSE: The Network on Employment

Association of Assistive Technology Act Programs

Association of University Centers on Disabilities

Autism Society of America

Autism Speaks

Bazelon Center for Mental Health Law

Child Welfare League of America

Children & Adults w/Attention Deficit-Hyperactivity Disorder (CHADD)

Council for Exceptional Children

Council of Parent Attorneys and Advocates

Disability Rights Education and Defense Fund

Division for Early Children of the Council for Exceptional Children

Easter Seals

Epilepsy Foundation

Goodwill Industries International, Inc.

IDEA Infant Toddler Coordinators Association

Learning Disabilities Association of America

Mental Health America

National Alliance on Mental Illness

National Association of Councils on Developmental Disabilities

National Association of County Behavioral Health and Developmental Disability Directors

National Association of Private Special Education Centers
National Association of School Psychologists
National Association of Social Workers
National Association of State Mental Health Program Directors
National Council for Community Behavioral Healthcare
National Disability Rights Network
National Down Syndrome Congress
National Down Syndrome Society
National Multiple Sclerosis Society
National Spinal Cord Injury Association
NISH
TASH
The Arc of the United States
Title II Community AIDS National Network
Tourette Syndrome Association, Inc.
United Cerebral Palsy
United Spinal Association
World Institute on Disability