

# Congress of the United States

Washington, DC 20515

October 29, 2008

The Honorable Kerry Weems  
Acting Administrator  
Centers for Medicare & Medicaid Services  
200 Independence Avenue, SW (Humphrey Building)  
Washington, DC 20201

Dear Acting Administrator Weems:

We write to share our deep concerns about the proposed regulation relating to clarification of outpatient clinic and hospital facility services definition and upper payment limit as it was published on September 28, 2007 (72 Federal Register 55158).

As you know, this proposed regulation would limit the definition and scope of federally reimbursable Medicaid outpatient services provided in a hospital clinic or facility as well as those provided in a rural health clinic. According to an internal analysis done by the New York State Governor's office, State health care providers would lose over \$452 million. It is important to note, however, that the figure does not account for the loss that also would be incurred by New York hospitals for similar services. Needless to say, such a loss of federal funding would have a devastating impact upon the State's health care infrastructure, and thus our constituents in upstate New York. Moreover, even after taking the initiative to analyze this complex regulation, New York State still does not fully understand the complete magnitude of its impact.

CMS has stated that it cannot determine the fiscal impact of the proposed rule and that CMS believes this rule would not significantly alter current practices in most states. However, the National Association of State Medicaid Directors (NASMD) reports that the proposed regulation "would significantly affect the Medicaid program in every state." In the face of such circumstances, prudence demands that the proposed rule's consequences be thoroughly examined, and well understood, before it is implemented.

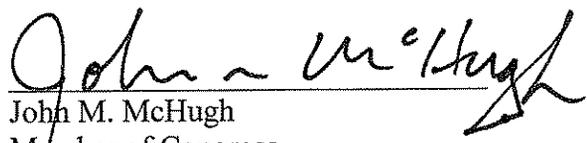
Accordingly, we respectfully request CMS not to finalize this misguided regulation. This regulation would impact every state in the nation and would significantly exceed the \$100 million threshold necessary to be considered a major rule. At a minimum, we ask that the regulation be resubmitted as a major rule with the appropriate 60-day comment period. Thank you for your careful consideration of our request.

Sincerely,



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James Walsh  
Member of Congress



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John M. McHugh  
Member of Congress

Michael A. Arcuri

Michael A. Arcuri  
Member of Congress

John R. "Randy" Kuhl

John R. "Randy" Kuhl  
Member of Congress

Kirsten E. Gillibrand

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