

# United States Senate

WASHINGTON, DC 20510

May 31, 2005

The Honorable Mark McClellan, M.D., Ph.D.  
Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Dr. McClellan:

We are writing to express our continued concern regarding actions by the Centers for Medicare and Medicaid Services (CMS) that could compromise the use of volunteer physicians as teachers training residents in non-hospital settings.

In 2002, CMS fiscal intermediaries began denying – oftentimes retroactively through audits – payments for the time residents spent in non-hospital settings where teaching physicians were freely volunteering their time to supervise resident training. We believe that CMS's actions are in direct conflict with Congressional intent expressed in provisions of the 1997 and 1999 balanced budget acts, which were designed to encourage rural and out-of-hospital experiences. They also put at risk the agreements that teaching hospitals, residency programs, physicians, clinics and community health centers have carefully negotiated to ensure that residents are exposed to ambulatory training. In direct response to CMS's actions, Congress called for a one-year moratorium on these kinds of payment denials in Section 713 of the Medicare Modernization Act (MMA).

Section 713 of the MMA also required the Office of the Inspector General (OIG) of the Department of Health and Human Services to conduct a study on residency training in non-hospital settings and to issue a report identifying alternative payment methodologies for the costs of training residents in those settings. The OIG report, which was released in December, found that teaching hospitals work with an extraordinary number of non-hospital facilities where teaching physicians are volunteering their time to train residents and provide them with valuable ambulatory educational experiences. In the report, the OIG not only identified five alternative methodologies for paying these costs, but also recommended that CMS work with Congress to extend the moratorium.

In keeping with this recommendation, we urge CMS to act immediately, through its inherent regulatory authority, to extend and expand the moratorium established by Section 713 of the MMA. Such action would allow Congress and CMS to further study and work collaboratively toward a clear and appropriate policy.

In accordance with the OIG's recommendations, we would like to work with CMS to:

- 1) further analyze the current financial arrangements among teaching hospitals, non-hospital facilities, and supervisory physicians in those settings;
- 2) study the potential impact of any revisions to the current policy; and
- 3) clarify the definition of "all or substantially all" of the costs associated with training residents in non-hospital settings.

In closing, we would also like to express our concern about the guidance included in the Q and A document issued by CMS on April 8 titled "Medicare Policy Qualifications on Graduate Medical Education Payments for Residents Training in Non-Hospital Settings." While we appreciate CMS's efforts to try to lend clarity to a difficult and poorly understood policy, we are concerned that this new guidance has raised more questions than it has answered. We are also concerned that it may impose undue regulatory burdens that will impede rather than encourage training in non-hospital settings.

Thank you for your consideration, and we look forward to working with you to resolve these issues through a collaborative effort to ensure that Medicare regulations do not discourage community physicians in non-hospital settings from agreeing to supervise residents.

Sincerely,

Susan Collins

Dick Durbin

Olympia Snowe

Mary L. Landrau

Mike DeWine

Patty Murray

Jeff Bond

Maria Cantwell

No. Glencoe

Frank R. Lankenberg

Charles Scherer

Chris Hald

*residents in non-hospital settings*

Pat Roberts

Debbie Steneau

John Thomas

Bryon L. Berg

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