

Congress of the United States
House of Representatives
Washington, DC 20515-0501

April 4, 2013

Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Re: Comment on CMS-2296-P2

Dear Ms. Tavenner,

Constituents whose family members have intellectual and developmental disabilities (I/DD) recently brought to my attention a Centers for Medicare & Medicaid Services (CMS) proposed regulation revision relating to how “community” is defined for the purpose of licensing of certain Medicaid programs.

On May 3, 2012, CMS proposed revised regulations (CMS-2249-P2) which, if adopted, will change how “community” is defined for the purpose of providing Medicaid reimbursement for the Social Security Act’s Home and Community Services (HCBS) Section 1915(c) waiver. The proposed rule would impose new restrictions on the types of residential settings considered “community-based,” by amending 42 CFR Section 441.301(b)(1)(iv).

I share my constituents’ concerns that the CMS proposal relies on arbitrary criteria to determine whether a setting is “community enough.” Of particular concern is the proposed requirement that the Secretary of the Department of Health and Human Services “apply a rebuttal presumption that a setting is *not* a home and community-based setting, and engage in heightened scrutiny” with regard to homes “on the grounds of, or immediately adjacent to, a public institution,” or homes that are part of a “housing complex designed expressly around an individual’s diagnosis or disability.”

This proposed definition could exacerbate an existing trend denying HCBS waiver funding for innovative housing communities serving people with intellectual and developmental disabilities. It could result in many excellent programs now serving people with intellectual disabilities without hope for adequate future funding and curtail innovation.

Consider, for example, Vine Village in Napa, California. Located on a 25-acre ranch, Vine Village is home to 19 adults with developmental disabilities. The ranch includes three homes, a greenhouse, a vegetable garden, a barn, some farm animals, walking and bike paths, and a swimming pool. I know from personal visits that Vine Village is very much a community and

home to its residents. Yet, existing bias and the proposed regulation view Vine Village as a “housing complex” that is not community enough.

In contrast, some smaller Board and Care group homes in California are “community” settings that receive HCBS funding, and would continue to be viewed as “community” under the new rule only because they single family homes with a few residents. These homes receive far less oversight and residents in some of these homes are quite isolated.

The proposed restrictions are overly-narrow and will discourage new and innovative housing models for people with developmental disabilities and autism at a time when innovation and expansion is needed. If developmental centers continue to downsize over the objections of many families, alternative models of care will need to be available to serve the specialized needs of developmental center residents. Furthermore, planned communities for people with disabilities, much like retirement communities for seniors or campus environments for university students, are gaining favor among some disability communities, especially the autism community.

As noted by the Department of Health Care Services, “California’s home and community-based services programs require that participants have the freedom to choose any available provider who can deliver the services and supports that they need. Individuals are free to choose from various types of residential settings for which they qualify.” (July 2, 2012). CMS’ proposed rule with regard to the definition of “community,” would seem be antithetical to individual choice because it threatens the viability of some existing housing communities now serving people well and would discourage future innovation and expansion.

I encourage CMS to reject the present proposal on the definition of “community-based.” I look forward to your comments in response to my concerns.

Sincerely,



MIKE THOMPSON
Member of Congress