

Congress of the United States
Washington, DC 20515

January 30, 2020

Seema Verma, MPH
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, DC 20201

Dear Administrator Verma:

We write regarding the proposed Medicaid Fiscal Accountability Regulation (MFAR) (Docket Number: CMS-2393-P) from November 18, 2019. We appreciate CMS' intent of promoting financial integrity in state Medicaid programs. However, the MFAR proposal as written could have unintended consequences for certain nursing homes and lead to increased costs for the older Americans we represent. Under the MFAR rule, states will have to repeal their exemptions from the nursing home provider bed tax that currently applies to continuing care retirement communities (CCRCs). CCRCs are likely to lose their exemption and be assessed additional state taxes, the costs of which could be passed on to CCRC residents, limiting access to and reducing the affordability of these communities.

CCRCs are a critical component of the aging services system. There are about 2,000 such communities across the country. Collectively, these communities are home to more than 700,000 Americans who rely on CCRCs to provide them with a full range of housing and services as they age, from dining services and social activity to skilled nursing care. CCRC residents are older adults, with the average new resident being 80 years old, and the vast majority of residents pay for care in CCRCs out-of-pocket (e.g. not with Medicare or Medicaid dollars). Almost two in three (65%) CCRCs are sponsored by a faith-based organization and most (79%) are nonprofit organizations. CCRCs often have nursing homes on-site, sometimes referred to as health centers. These nursing homes operate like any other nursing home and must comply with federal and state nursing home regulations.

Most CCRC nursing homes do not participate in the Medicaid program or do so in a limited capacity. Because of this, many states exempt these communities from paying state provider taxes or assess them a reduced provider tax rate. Under the proposed MFAR rule, retirees across the country who plan carefully for long term care could face increased out-of-pocket costs if CCRCs were to pass the cost to the consumer through heightened entrance fees or monthly fees. While the exact cost of these new taxes would vary by state and by community, the price for seniors living in CCRCs in our communities could be significant to people who live on fixed incomes and have carefully planned for retirement costs, possibly adding several hundred dollars to a resident's monthly expenses. To that end, we urge CMS to withdraw the proposed changes to 42 CFR §

433.68 or to include language in any final rulemaking that makes clear that state provider tax exemptions and discounts for CCRCs comply with the final rule.

We do not believe it's the intention of CMS to take regulatory action that would increase state taxes or the cost of nursing home care for private-pay residents. The proposed MFAR, however, could do just that by disallowing provider tax exemptions or discounts for nursing homes that serve all or mostly older residents who pay out-of-pocket. This change constricts the availability of high-quality nursing home beds at a time when demand is increasing exponentially. Older Americans who have spent their lives contributing to their communities and planning their retirements will pay the price.

We urge CMS to protect these older Americans.

Sincerely,



DONNA E. SHALALA
Member of Congress



JOHN H. RUTHERFORD
Member of Congress



ROSA DELAURO
Member of Congress



VERN BUCHANAN
Member of Congress



NYDIA VELAZQUEZ
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