

# United States Senate

March 4, 2010

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Ms. Charlene M. Frizzera, Acting Administrator  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
Room 314G Humphrey Building  
200 Independence Avenue, S.W.  
Washington, DC 20201-0004

Dear Administrator Frizzera:

I am writing concerning a final rule issued by the Centers for Medicare and Medicaid Services (CMS) regarding the policy for physician supervision for outpatient therapeutic services. I ask that CMS delay this recent policy change and stop any enforcement actions until a new policy can be put into place.

I understand that CMS's intent was to clarify the Outpatient Prospective Payment System (OPPS) rule on outpatient therapeutic services, which had been in place since 2001. However, in reality, this final rule represents a drastic policy change which could be devastating to rural providers in my home state of Nebraska and other rural states.

The 2010 OPPS Final Rule clarification requires that physicians supervising outpatient therapeutic services – such as blood transfusions or intravenous therapy – must be physically present and immediately available on campus at all times when such services are being provided in hospitals. Previously, the health care community had interpreted the OPPS rule to mean that direct physician supervision was only required for off-campus, provider-based facilities, not for services provided in hospitals and other on-campus environments.

As a result, prior to this policy change, supervision of therapeutic services was fulfilled if the physician was available by phone at all times and physically located within a short distance of the hospital, *i.e.* able to get to the hospital within 30 minutes. Meanwhile, nurses and other qualified hospital staff were still present at the hospital. This new policy will require a physician to be immediately available on campus any time a patient undergoes certain therapeutic services.

Such a narrow interpretation will have a devastating impact on rural states such as Nebraska, where critical access hospitals (CAHs) are the main source of care for residents living in many small, rural communities. These hospitals have very low, even negative, operating margins; and they simply cannot afford to employ physicians – whose sole responsibility is to provide supervision – to remain on site 24 hours per day, 7 days per week.

In addition, rural states such as Nebraska are already facing a critical shortage of providers; most of our communities will not be able to even begin finding enough qualified providers to meet this

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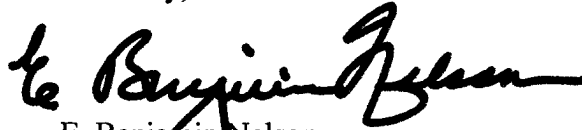
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new mandate. Requiring CAHs to comply with this new policy will ultimately result in limiting the services these CAHs can provide, meaning patients may have to drive far away from their homes to receive the care they could otherwise have received from their local community hospitals.

While I understand the intent of this rule clarification was to protect patient safety, I believe its one-size-fits-all approach will have the unintended consequence of preventing seniors from having access to vital care. Therefore, I ask that you rescind this policy change and consider the unique circumstances of rural communities when developing a new policy.

I appreciate your prompt attention to this important matter. Should you have any questions or require additional information, please feel free to contact me directly or have your staff contact Charlie Ellsworth of my staff at (202) 224-6551.

Sincerely,

A handwritten signature in black ink, reading "E. Benjamin Nelson". The signature is written in a cursive style with a large, prominent initial "E".

E. Benjamin Nelson  
United States Senator

EBN:cge