

**Congress of the United States**  
**Washington, DC 20515**

September 17, 2010

Donald Berwick, M.D.  
Administrator  
Centers for Medicare & Medicaid Services  
Hubert H. Humphrey Building  
200 Independence Avenue, S.W., Room 445-G  
Washington, DC 20201

Dear Dr. Berwick:

We write to express our concerns regarding the proposed Medicare outpatient prospective payment system (OPPS) regulation for Calendar Year (CY) 2011. In this rule, the Centers for Medicare & Medicaid Services (CMS) propose to require a modified level of physician supervision for a small number of specified hospital outpatient therapeutic services, beginning in 2011. We are concerned that this proposed change does not go nearly far enough to ensure continued access to the full range of outpatient therapeutic services in hospitals, particularly for small and rural facilities, such as critical access hospitals (CAHs).

Hospital outpatient therapeutic services have always been provided by licensed, skilled professionals under the overall direction of a physician. While hospitals recognize the need for direct supervision for certain outpatient services that pose high risk or are very complex, CMS' proposed policy still requires direct supervision for even the lowest risk services, such as simple injections of pain medication, minor wound debridement and drainage of wounds. There are many other procedures that can be, and are, safely furnished in hospital outpatient departments under the general supervision of a physician.

In the CY 2009 OPPS rules, CMS made a significant change in its policy, which the agency characterized as a "restatement and clarification" of existing policy. CMS "clarified" that its policy since 2000 required direct physician supervision in all hospital locations. CMS provided no clinical rationale for this change and, indeed, has publically acknowledged that the "restatement and clarification" in the 2009 final rule was issued without any allegations or evidence that quality of care or patient safety had been compromised in hospital outpatient departments.

In 2010, in response to public concern, CMS made a few limited – and in the case of CAHs, short-term – changes. CMS began to allow certain Non-Physician Providers (NPPs) to provide direct supervision of outpatient therapeutic services, and revised the policy around where the supervising professionals were required to be on the hospital campus. CMS also delayed enforcement of the direct supervision regulation for CAHs for CY 2010.

In the CY 2011 rule, CMS proposes that a set of 16 outpatient therapeutic services require direct supervision only for the initiation of the service, followed by general supervision for the remainder of the service. All other services would continue to require direct supervision. We do not believe this proposed change provides the relief that hospitals and CAHs need to staff appropriately and to continue to provide a full range of services to their communities. In fact, for CAHs and other small rural hospitals, located in communities where physician and NPP shortages are most severe, this modified supervision policy will not help at all, as they will still need to have a supervising physician or NPP on the premises and "immediately available" when these services are provided.

We also believe the same underlying concerns with the issue of direct supervision for outpatient therapeutic services are unaddressed: CMS' overall policy is unwarranted and unworkable, there is a shortage of physicians and NPPs and many hospitals and CAHs will find it difficult, if not impossible to meet the supervision requirements and these requirements severely restrict hospitals' ability to effectively use their existing staff. In addition, due to CMS' failure to rescind its retroactive reinterpretation of its previous supervision policy, hospitals and CAHs remain vulnerable to unwarranted, but significant, potential penalties and opportunistic whistleblowers.

We ask that you revisit this policy – going as far back as the 2009 "clarification" – and make a fundamental change in the supervision policy. Thank you for your consideration and we look forward to your response to this letter.



---

EARL POMEROY  
Member of Congress



---

JERRY MORAN  
Member of Congress



---

RODNEY ALEXANDER  
Member of Congress




---

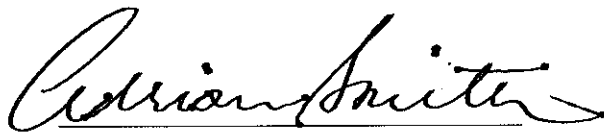
GREGG HARPER  
Member of Congress



CHARLIE MELANCON  
Member of Congress



BRETT GUTHRIE  
Member of Congress



ADRIAN SMITH  
Member of Congress



BRUCE BRALEY  
Member of Congress



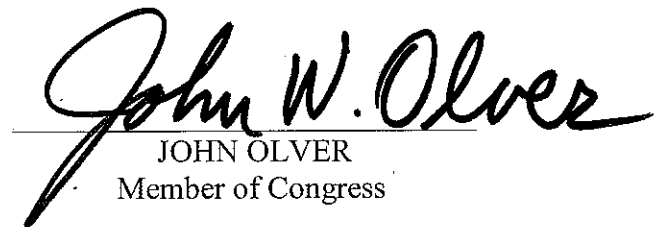
CYNTHIA LUMMIS  
Member of Congress



KEITH ELLISON  
Member of Congress



STEVE KING  
Member of Congress




JOHN OLVER  
Member of Congress




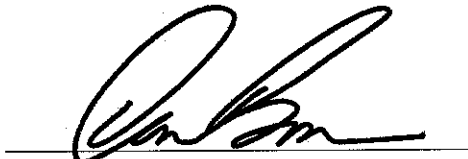
DOC HASTINGS  
Member of Congress



JOHN KLINE  
Member of Congress


  
JOHN SALAZAR  
Member of Congress

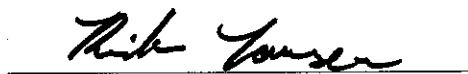
  
JOHN BARROW  
Member of Congress

  
DAN BOREN  
Member of Congress


  
RON PAUL  
Member of Congress

  
MICHAEL ARCURI  
Member of Congress

  
LYNN JENKINS  
Member of Congress

  
RICK LARSEN  
Member of Congress

  
GLENN THOMPSON  
Member of Congress

  
LINCOLN DAVIS  
Member of Congress

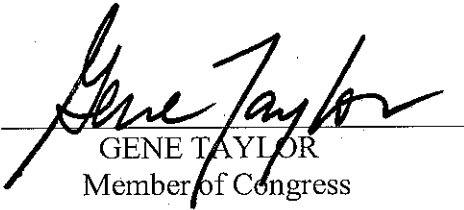
  
PHIL HARE  
Member of Congress



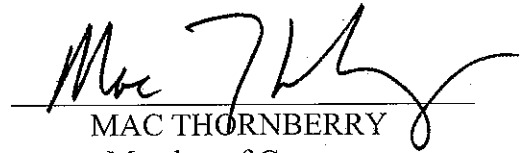
COLLIN PETERSON  
Member of Congress



IKE SKELTON  
Member of Congress



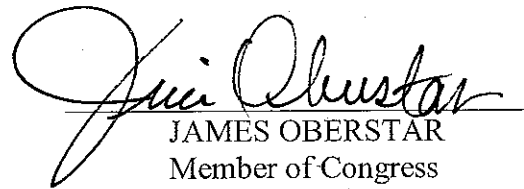
GENE TAYLOR  
Member of Congress



MAC THORNBERRY  
Member of Congress



WALTER JONES  
Member of Congress



JAMES OBERSTAR  
Member of Congress



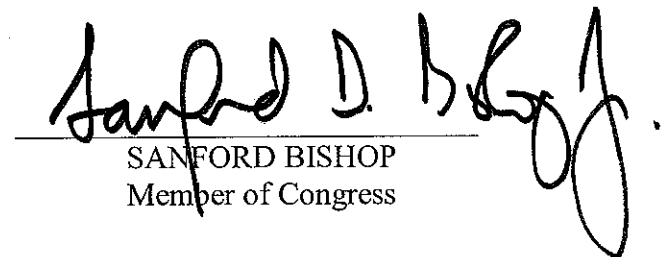
BILL OWENS  
Member of Congress



NICK RAHALL  
Member of Congress



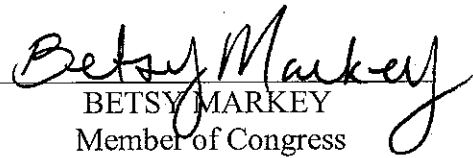
MIKE SIMPSON  
Member of Congress



SANFORD BISHOP  
Member of Congress



DAVID LOEBSACK  
Member of Congress



BETSY MARKEY  
Member of Congress



BILL FOSTER  
Member of Congress



SAM GRAVES  
Member of Congress



RON KIND  
Member of Congress



MIKE PENCE  
Member of Congress



JOHN BOOZMAN  
Member of Congress



BEN CHANDLER  
Member of Congress



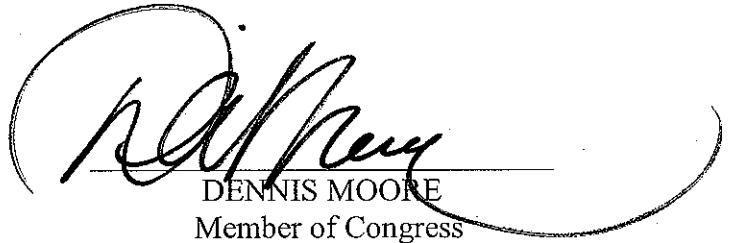
JOE DONNELLY  
Member of Congress



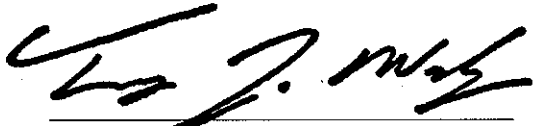
GABRIELLE GIFFORDS  
Member of Congress



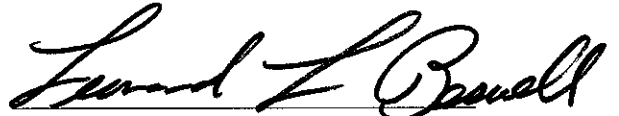
MICHAEL MICHAUD  
Member of Congress



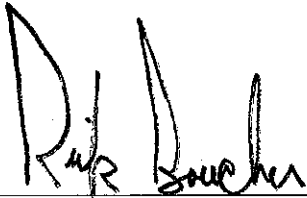
DENNIS MOORE  
Member of Congress



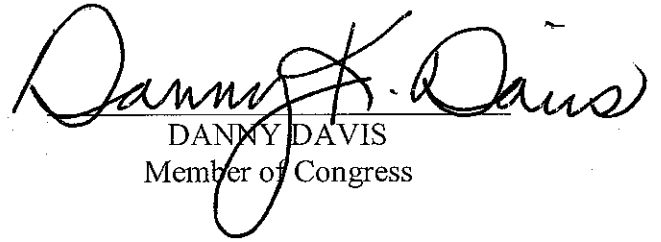
TIM WALZ  
Member of Congress



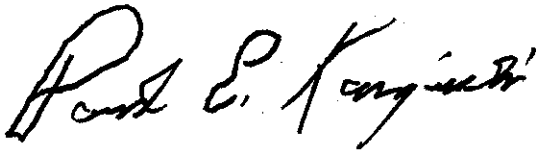
LEONARD BOSWELL  
Member of Congress



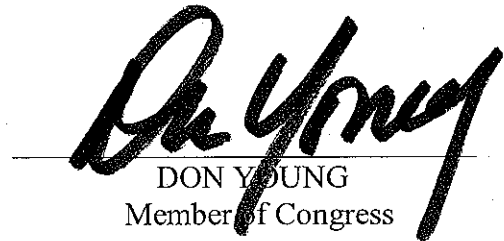
RICK BOUCHER  
Member of Congress



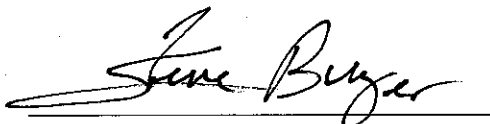
DANNY DAVIS  
Member of Congress



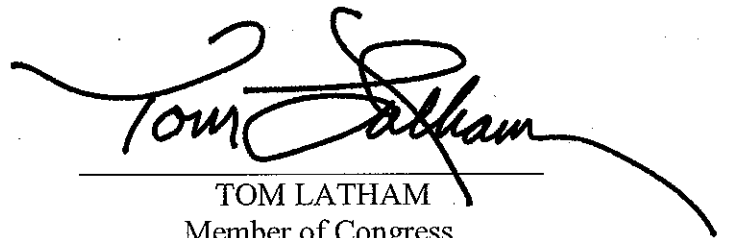
PAUL KANJORSKI  
Member of Congress




DON YOUNG  
Member of Congress

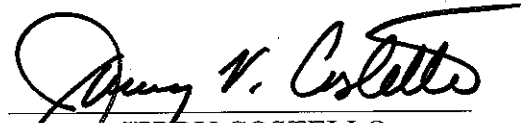



STEVE BUYER  
Member of Congress

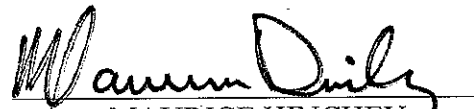



TOM LATHAM  
Member of Congress

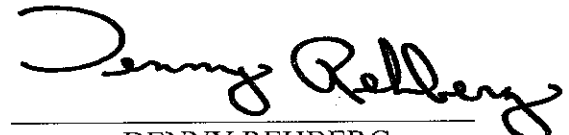
  
SHELLEY MOORE CAPITO  
Member of Congress

  
JERRY COSTELLO  
Member of Congress

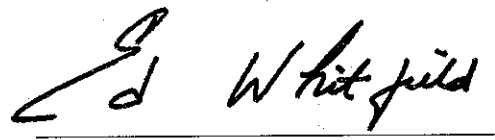
  
JO ANN EMERSON  
Member of Congress

  
MAURICE HINCHEY  
Member of Congress

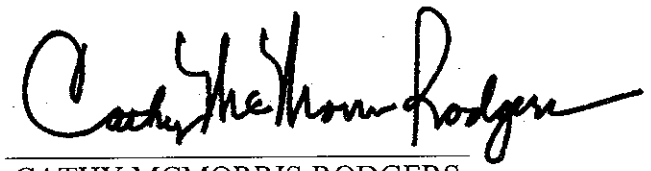
  
MIKE MCINTYRE  
Member of Congress

  
DENNY REHBERG  
Member of Congress

  
MIKE ROSS  
Member of Congress

  
ED WHITFIELD  
Member of Congress

  
STEPHANIE HERSETH SANDLIN  
Member of Congress

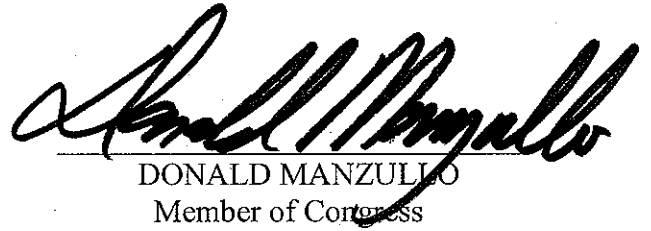
  
CATHY MCMORRIS RODGERS  
Member of Congress





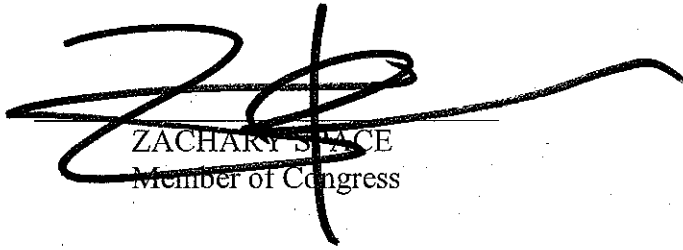
---

ADAM SMITH  
Member of Congress



---

DONALD MANZULLO  
Member of Congress



---

ZACHARY SPACE  
Member of Congress