



THE SECRETARY OF HEALTH AND HUMAN SERVICES

WASHINGTON, D.C. 20201

October 27, 2011

The Honorable Scott Walker
Chair
National Governors Association
Hall of States
444 North Capitol Street, Suite 267
Washington, DC 20001

Dear Governor Walker:

Thank you for your letter urging the Department of Health and Human Services to consider using Medicaid and/or Medicare demonstration authorities to offset state costs associated with Special Disability Workload (SDW) cases. As a former Governor, I understand the financial burden associated with these cases.

Over many years, the Social Security Administration classified certain disabled individuals as eligible for the Supplemental Security Income (SSI) program, but later determined these individuals were eligible for Social Security Disability Insurance (SSDI). Many state Medicaid programs paid for medical services on behalf of these individuals while they were in the SSI program, though Medicare may very well have paid if they had been enrolled in SSDI. States have approached the Centers for Medicare & Medicaid Services (CMS) throughout the past five years seeking to resolve this concern, and two states (New York and Massachusetts) have gone to court on this issue. The courts concluded that nothing in either the Federal Medicare or Medicaid Acts authorizes the Medicare program to directly reimburse states for these expenditures. Attempts to resolve this issue through federal legislation have been unsuccessful.

When SDW cases first came to light, states were advised that there were no remedies available other than recouping erroneous Medicaid payments from providers, and having those providers then use Medicare billing procedures to file Medicare claims for covered services. I understand the concerns that have been raised about this option, most notably that this would prove difficult for both states and providers, given that many of the claims are many years old, documentation may not be available, and the Medicare timely claims filing limits may have long been exceeded.

Governors have asked me to consider using Medicare and/or Medicaid demonstration authorities to resolve this issue. I have carefully explored this option but, unfortunately, I do not have the statutory authority to use my demonstration authorities to this end. However, I do want to assure you that I will work with affected states to explore possible legislative solutions.

Although we do not have a quick solution to the SDW issue, I am committed to finding ways to help address Medicaid fiscal pressures. Building on initiatives that CMS has recently announced that respond to state requests for shared savings with respect to dual-eligible beneficiaries, I look

forward to continuing to improve the Medicare and Medicaid programs to better serve both our beneficiaries and the states that administer the Medicaid program.

Again, thank you for raising this important issue and calling to my attention your proposed solution.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Sebelius". The signature is written in a cursive, flowing style with some loops and flourishes.

Kathleen Sebelius