

# United States Senate

WASHINGTON, DC 20510

May 24, 2011

The Honorable Kathleen Sebelius  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

The Honorable Donald W. Berwick, M.D.  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Sebelius and Administrator Berwick:

We are writing to express our serious concerns regarding the Department of Health and Human Services' (HHS) recently-proposed regulation implementing Section 3022 of the Patient Protection and Affordable Care Act – the Medicare Shared Savings Program, commonly referred to as Accountable Care Organizations (ACOs).

Rewarding high quality, efficient providers based on positive patient outcomes in an ACO model is a concept that sustained bipartisan support throughout the contentious health care debate of the 111<sup>th</sup> Congress. Accordingly, we sincerely appreciate the time and effort the Administration has invested in developing the draft ACO regulation.

However, we have been struck by the increasingly diverse chorus of concerns many of our nation's leading health care institutions have raised in recent days about the proposed ACO regulation. Innovative integrated health providers as the Billings Clinic (MT), Intermountain Healthcare (UT), the Cleveland Clinic (OH), Mayo Clinic (MN), Sutter Health (CA), Marshfield Clinic (WI) have expressed serious concerns with the details of the proposed rule.

These providers are not the only ones concerned. In fact, all ten members of the nationally-recognized Physician Group Practice (PGP) CMS demonstration project have expressed "serious reservations" about the regulation's current construction. It is troubling that their participation is doubtful, since these PGP members and experience are cited more than 75 times in your Agency's 400+ page proposed rule as a model for the ACO regulation.

One clear disincentive was identified last week. The American Hospital Association released a report noting that actual ACO start-up costs will likely be at least 10 times higher than the estimated costs cited in the proposed rule.

The concerns over the ACO regulation from some of our nation's most knowledgeable and innovative health care providers are clear. Incentives and accountability are misaligned. Detailed requirements are complex and return on investment is uncertain.

Unfortunately, based on the feedback we have from providers around the country, we conclude that the proposed ACO regulation will fail to accomplish its purpose. Therefore, we respectfully ask that you withdraw this proposed rule and re-engage experienced stakeholders to craft a new rule that fulfills the promise of ACOs.

In principle, the model of an ACO still holds promise. To truly improve the Medicare program for the beneficiaries of today and tomorrow, more ACO-like coordination and collaboration among providers and beneficiaries is undoubtedly a worthwhile goal. An ACO model that can increase provider coordination and patient accountability would be a step in the right direction compared with today's fragmented delivery system. However, it is increasingly clear this proposed rule misses the target.

We look forward to the Department redesigning a regulation that will truly help accomplish our shared goals for patients, providers, and taxpayers alike: better care at lower costs. In the weeks ahead, we look forward to your working with you and other Administration leaders on this matter.

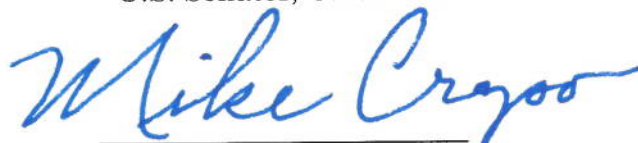
Sincerely,



Tom Coburn, M.D.  
U.S. Senator, Oklahoma



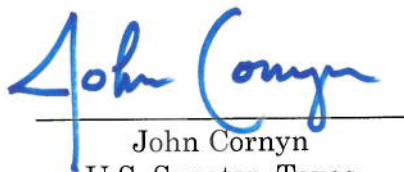
Jon Kyl  
U.S. Senator, Arizona



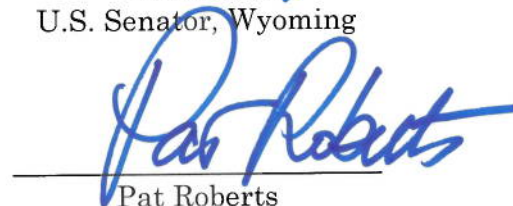
Mike Crapo  
U.S. Senator, Idaho



Mike Enzi  
U.S. Senator, Wyoming



John Cornyn  
U.S. Senator, Texas



Pat Roberts  
U.S. Senator, Kansas



Richard Burr  
U.S. Senator, North Carolina