

Congress of the United States
Washington, DC 20515

Sept 30, 2016

Mr. Andrew M. "Andy" Slavitt
Administrator
Centers for Medicare and Medicaid Services (CMS)
U.S. Department of Health and Human Services
Hubert H. Humphrey Bldg. – Room 310G
200 Independence Ave, SW
Washington, D.C. 20201

Dear Administrator Slavitt:

In order to secure effective implementation of the landmark *Olmstead* Supreme Court decision, which held that public entities must provide community-based services to persons with disabilities when such services are appropriate, we strongly urge you to make community-based service providers for people with intellectual and developmental disabilities (I/DD) participating in Home and Community-Based Services (HCBS) waivers eligible to participate in the Medicaid provider tax program (Section 1903(w)(3)(A)).

States across the country are struggling with immense budget deficits while also trying to create opportunities for everyday life activities for individuals with I/DD such as family relations, social contacts, work options, economic independence, educational advancement and cultural enrichment. In fact, according to a 2014 estimate from the Kaiser Family Foundation, nearly 350,000 persons with I/DD are on waiting lists for enrollment in Medicaid Section 1915(c) HCBS waivers. A more recent series of *New York Times* articles estimated that 275,000 low income non-elderly adults with disabilities live in skilled nursing facilities nationwide rather than in the community. That equals ten percent of the entire nursing home population in the United States.

In the meantime, state legislatures, the U.S. Department of Justice (DOJ) and private litigants are all fundamentally seeking to address the same issue: how to provide Medicaid funding to transition persons with disabilities from institutions to the community. At this writing, DOJ reports *Olmstead* enforcement litigation in eleven (11) states. At the same time, numerous state legislatures – often with large bipartisan majorities – have passed statutes authorizing HCBS waiver providers to participate in their provider tax programs.

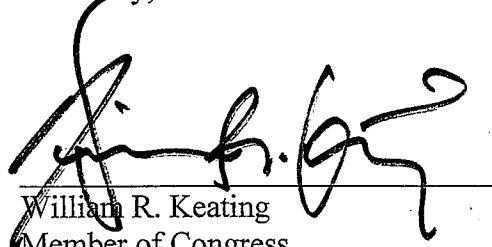
It's time that the Centers for Medicare and Medicaid Services (CMS) join them. By exercising your agency's appropriate executive authority, states would be empowered to implement authorizing statutes, reduce waiting lists, curtail segregated employment and address long standing barriers to housing while also bolstering workforce and improving quality of services.

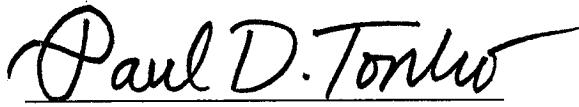
Intermediate care facilities (ICFs) are already a permitted class under the Social Security Act's provider tax provision. As waivers to ICFs, HCB services are the legitimate successors to the provision of such institutional services and provide better outcomes, are cost effective, and align with state and federal policy objectives.


Recognizing HCB services as a class would recognize the important evolution of HCB services and rightfully uphold the Olmstead decision and Section 504 of the Rehabilitation Act. We strongly urge you to take the necessary action on or before January 20, 2017. Thank you for your attention to this important matter.

Sincerely,


James R. Langevin
Member of Congress


William R. Keating
Member of Congress


Paul Tonko
Member of Congress


David N. Cicilline
Member of Congress