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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

July 19, 1993

NOTE TO: PETER EDELMAN
JERRY KLEPNER

RE: CCD Proposal

I asked my staff to look into the CCD proposal regarding personal care services. It appears that CBO estimates that the $4.2B in savings would evaporate if the proposal is adopted. I think this is a non-starter.

Ken Apfel

See attached - I don't see any way that we can help.

I-2398

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

JUL 15 1993

NOTE TO KEN APFEL

THROUGH: Betty Jones
Dennis P. Williams

FROM : Christy Schmidt Bayne

SUBJECT: Personal Care Services

You asked for our analysis of two legislative options proposed by the Consortium for Citizens with Disabilities (CCD) which would alter the reconciliation proposal to repeal mandatory personal care services.

- **CBO estimates that the $4.2 billion savings over 5 years from repealing the mandate would evaporate if the CCD alternatives were accepted.** This is primarily because groups would have stronger legal standing for coverage disputes and many of the utilization controls would be removed.

BACKGROUND

- The **Administration's proposal** to repeal the mandate simply removes personal care as part of the mandatory Home Health benefits and retains the same requirements as current law.

- **Current law** includes personal care services as a part of the mandatory Home Health benefit with requirements that the services be 1) prescribed by a physician, 2) provided by a qualified individual who is not a family member, 3) supervised by a nurse, and 4) furnished in a home or other location excluding nursing facilities.

CCD Alternatives

- The first alternative has several potential problems.
  - There is no exclusion of services for persons residing in nursing facilities.
  - Providing recipients with "maximum opportunity for choice and control" is much to vague.
  - Not requiring prescription by a physician and supervision by a nurse essentially eliminates the medical necessity oversight.
  - Reimbursing family members for providing care is a dangerous precedent - slippery slope.

- The second alternative would be a regulatory nightmare. The proposal has the Secretary defining personal care services. HCFA believes this would cause interest groups to come out of the woodwork.

I-2282

Consortium for Citizens with Disabilities

July 6, 1993

Peter Edelman, Esq.
Counselor to the Secretary
Office of the Secretary
Department of Health and Human Services
200 Independence Ave., SW, Room 615F
Washington, D.C. 20201

Dear Peter:

On behalf of the CCD Task Forces on Long Term Services/Medicaid, Health, and Personal Assistance Services, we want to thank you for convening the June 28 meeting with CCD representatives and Health Care Financing Administration officials regarding two issues where time is of the essence: personal assistance services and durable medical equipment. We were pleased with a number of the commitments which resulted from the meeting. However, we are concerned with the response received on personal assistance services.

First, we were pleased with the positive approach to improving consumer input into HCFA decisions which Administrator Bruce Vladeck and staff indicated they will institute. We believe that it is critical that the needs, concerns, ideas, and wisdom of beneficiaries be truly taken into account when changes to existing programs or new initiatives are contemplated. HCFA's intent to address consumer concerns in future actions, including in the current durable medical equipment issues, was clear.

On the other hand, we are concerned about the apparent Administration reluctance to support the disability community in its efforts to improve the reconciliation language regarding personal care services. While the Administration proposed and the Congress is deliberating repeal of the mandate for personal care services in Medicaid, we believe that the disability community has been remarkably reasonable in its reaction. Granted the repeal of the mandate is intended to address a legislative drafting error; however, many people with disabilities across the country see it as eliminating $3.7 billion worth of critically needed personal assistance services. Our attempt in the reconciliation process is to prevent further harm by ensuring that a statutory definition of optional personal care services is an appropriate one. Moreover, in this time of deficit reduction, we view this as a critical opportunity for President Clinton to make good on his commitments to increasing access to consumer driven personal assistance services and added flexibility for the States. We, therefore, expect and hope that the Administration would support such an adjustment in the legislative language during the reconciliation conference.

Enclosed is another copy of CCD's proposed language and an alternate provision.

While we understand that there may be other policy considerations at issue here, we hope that the Administration will be able to support the disability community's efforts to appropriately define personal care services. We look forward to your response.

Sincerely,

Paul Marchand
The Arc

Bob Williams
United Cerebral Palsy Assoc., Inc.

cc: Carol Rasco
Michael Lux
Chris Metzler, NADDC
Marty Ford, The Arc
Peter Thomas, ACA
Bob Griss, UCPA
Robert Gettings, NASDDDS

Personal assistance services can be provided as an optional benefit when such services:

(A) provide the recipient with maximum opportunity for choice and control;

(B) are:

(1) prescribed by a physician for an individual in accordance with a plan of treatment and supervised by a registered nurse; or

(2) authorized in accordance with an individualized service plan and supervised by qualified personnel as specified by the state; and

(C) are provided by an individual who is qualified to provide such services and who is not a member of the individual's family except under circumstances defined by the Secretary.

Alternate language (if above is not possible):

Personal assistance services, as defined by the Secretary, furnished in a home or other location, but not including such services furnished to an inpatient or resident of a nursing facility or ICF/MR.