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March 20, 2008

The Honorable John D. Dingell  
Chairman, Energy and Commerce Committee  
U.S House of Representatives  
2328 Rayburn House Office Building  
Washington, DC 20515

The Honorable Timothy F. Murphy  
Energy and Commerce Committee  
U.S House of Representatives  
322 Cannon House Office Building  
Washington, DC 20515

Dear Chairman Dingell and Congressman Murphy:

On behalf of the Child Welfare League of America (CWLA) and our public and private member agencies across the country who work directly with abused, neglected, and otherwise troubled children, youth, and their families, I write to thank you for your bipartisan introduction of the Protecting the Medicaid Safety Net Act of 2008 (H.R. 5613). In reaction to a series of restrictive regulations that threaten core components of the Medicaid program currently serving some of Medicaid's neediest populations, this legislation laudably seeks to place a one-year moratorium on these rules to ensure that Congressional intent is upheld, the best policies are put in place, and most importantly—Medicaid beneficiaries are not unduly harmed.

Medicaid provides much needed health insurance to at least 28 million low-income children, including children and youth in our nation's foster care system that experience a disproportionate amount of physical and mental health needs due to biological factors, maltreatment they were exposed to in the home, the life-altering consequences breaking familial ties, and/or the continued instability that often ensues. The Medicaid program—including its mandatory services and its optional services—is critical to placing these youngsters on a healthy trajectory. CWLA and our members are extremely concerned about the broad scale impact of the seven regulations CMS recently issued and we are particularly troubled by the two rules affecting the Rehabilitative Services and Case Management/Targeted Case Management Services options, two key streams of care for children and youth in the child welfare and foster care systems.

The Medicaid Rehabilitative Services option works to reduce physical and/or mental disabilities that many children in care experience as a result of abuse, neglect, or similar trauma and restore them to optimal functioning level. Oftentimes, the rehab option is used to support therapeutic foster care programs that permit seriously emotionally disturbed children to stay in community-based settings, rather than be placed in a more restrictive environment. While not explicitly prohibiting rehab services to children and youth in child welfare and foster care, by putting in place an ambiguous "intrinsic elements" test, the rule will take away significant federal funding and access will surely be restricted.

Taking into account the vulnerability and complex needs of children in foster care—including health needs, at least thirty-eight states employ the Targeted Case Management option to ensure that children in foster care receive a comprehensive approach and greater coordination of care. The interim final rule seeking to interpret the Deficit Reduction Act’s changes to case management/TCM goes far beyond the DRA’s statutory provisions on numerous fronts. For instance, the regulation vaguely disallows Medicaid reimbursement for case management/TCM services that are deemed “integral to” the administration of another non-medical program, such as child welfare and child protective services (CPS). CMS alludes that this exclusion could extend to case management services furnished by contractors to State child welfare and CPS agencies, even if they are otherwise qualified Medicaid providers. This dissection obliterates the goal and need for systems to work together towards the well-being of children in care and seems directly contradictory to the very purpose of case management and TCM.

These are only some examples of the sweeping and, we believe, devastating changes the Medicaid rules would make. Even more egregious, these decisions have been made outside of the formal lawmaking process without proper consideration, analysis, and debate of long-term impact on Medicaid beneficiaries. The rules are also being pushed by the Administration in a time of serious economic downturn—forcing states to shoulder a seemingly insurmountable financial burden or to cut in other important areas to continue providing these valuable services.

Your bill, H.R. 5613, will grant us the gift of time so that underlying policy issues can be addressed and Congress can determine whether the rules are in line with Congressional intent and whether they are, in fact, the best route forward for Medicaid and its vulnerable beneficiaries. Thank you again for your leadership and we look forward to working with you to protect the Medicaid program.

Sincerely,

A handwritten signature in cursive script that reads "Christine James Brown".

Christine James-Brown  
President/CEO  
Child Welfare League of America