

ROBERT E. LATTA
5TH DISTRICT, OHIO

DEPUTY WHIP

COMMITTEE ON
ENERGY AND COMMERCE
SUBCOMMITTEE ON
COMMUNICATIONS AND TECHNOLOGY
VICE CHAIRMAN

SUBCOMMITTEE ON
ENERGY AND POWER

SUBCOMMITTEE ON
ENVIRONMENT AND THE ECONOMY

Congress of the United States
House of Representatives
Washington, DC 20515-3505

July 10, 2015

WASHINGTON OFFICE:
2448 RAYBURN HOUSE OFFICE BUILDING
(202) 225-6405

DISTRICT OFFICES:
1045 NORTH MAIN STREET
SUITE 6
BOWLING GREEN, OH 43402
(419) 354-8700

101 CLINTON STREET
SUITE 1200
DEFIANCE, OH 43512
(419) 782-1996

318 DORNEY PLAZA
ROOM 302
FINDLAY, OH 45840
(419) 422-7791

The Honorable Sylvia Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

RE: Proposed Rule [CMS-3302-P] – Medicare and Medicaid Program: Revisions to Certain Patient’s Rights Conditions of Participation and Conditions for Coverage; 42 CFR Part 416, 418, 482, 483, and 485

Dear Secretary Burwell,

I write to express my concern with the proposed rule issued by the Centers for Medicare and Medicaid Services (“CMS”) on December 11, 2014 relating to revisions of conditions of participation for providers, conditions for coverage for suppliers, and requirements for long-term facilities as a result of the Supreme Court decision in *United States v. Windsor*, 570 U.S. 12, 133 S. Ct. 2675 (2013), and the U.S. Department of Health and Human Services policy. More specifically, it is my understanding that this proposed rule seeks to amend certain definitions and patient’s rights provisions in order to ensure that same-sex spouses in legally valid marriages are recognized and afforded equal rights in Medicare and Medicaid participating facilities.

According to *United States v. Windsor*, the Supreme Court held that section 3 of the Defense of Marriage Act is unconstitutional because it violates that Fifth Amendment. Therefore, the word “marriage” and “spouse” no longer only legally refer to a union between one man and one woman as husband and wife. In light of the *Windsor* decision, CMS interpreted certain definitions and patient’s rights provisions denied federal rights and privileges to a same-sex spouse if their state of residence does not recognize same-sex marriages. Thus, this proposed rule would revise regulations governing Medicare and Medicaid participating providers and suppliers by clarifying where state law or facility policy provides or allows certain rights or privileges to a patient’s opposite-sex spouse under certain provisions, a patient’s same-sex spouse must be afforded equal treatment if the marriage is legally valid.

This rule was proposed before the Supreme Court decision in *Obergefell v. Hodges*, which legalized same-sex couples to marry in all states and requires states to recognize same-sex marriages that were legally performed in other states. Therefore, I understand that this proposed rule may be altered to address the recent Court decision. However, despite *Windsor* and *Obergefell*, this regulatory change clearly oversteps the scope of CMS by infringing on the rights of faith-based healthcare providers.

Requiring faith-based CMS certified providers, suppliers, and long-term facilities to accept and endorse a new definition of marriage as a condition for continued Medicare and Medicaid reimbursement is not only discriminatory, it also negatively impacts patient care. Many of these facilities provide excellent care to community residents, and to force separation of faith and the practice of healthcare would challenge their essence and existence. The proposed rule effectively forces participating facilities to choose between religious liberty and providing healthcare to members of their community – a choice they should not have to make.

Thank you for your attention to this matter, and I look forward to your response. If you or your staff has any questions, please contact me or Rachel Schwegman on my staff at (202) 225-6405.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert E. Latta", with a stylized flourish extending to the right.

Robert E. Latta
Member of Congress