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March 18, 1988

Senator Rudy Boschwitz
United States Senate
Washington, D.C. 20510

Re: S. 1673 / H.R. 3454
The Medicaid Home and Community Quality Services Act

Dear Senator Boschwitz:

I sincerely hope that you will not co-sponsor or support the above bills.

I am currently a member of the Board of Directors of Mt. Olivet Rolling Acres, Laura Baker School and the Faribault Regional Center. All three of these institutions are doing an excellent job of providing care, treatment programming and residential living for profoundly and severely mentally retarded citizens.

My 36 year old daughter lives in a very home like residential unit at the Faribault Regional Center with nine other women.

If the above proposed legislation is adopted, I am satisfied that freezing or reducing the federal medicaid funding for these three institutions and the approximately 40 other community residential facilities in Minnesota (having more than 15 beds and therefore considered an institution) would result in the closure of all of said excellent facilities.

I can assure you that although there are many good features about the above proposed legislation, placing all of these people in houses for three or four will result in the death, injury, or poor quality of care and treatment for many of the current residents of the present institutions.

For example, recently one Faribault Regional Center resident was transferred to a Faribault group home and died from drinking salt water, another was transferred to a group home and then killed by an auto while she was crossing the street, another was transferred

March 18, 1988

Page 2

to an Austin, Minnesota group home and died, another was transferred to a Rochester group home and died of a seizure because medical and nursing treatment was not promptly available as it was at the Faribault Regional Center - a State owned and operated institution.

I can also assure you that if the profoundly and severely retarded or severely behaviorally affected residents are transferred to the small community houses or apartments, the cost of providing equal care and treatment and programming will be much greater than the present cost. The proponents' cost comparison compare apples (mildly and moderately mentally retarded persons without physical and mental illness problems who are living in the community) with oranges (severely and profoundly mentally retarded persons with severe physical or mental illness or behavioral problems). The proponents' statistics also do not include the same costs. For example, the group homes cost figures do not include their day programming costs, the state institutions costs do. They do not include medical, hospital, and drug cost, the state institutions do. They do not include state administrative costs, the state institutions do.

A possible way to correct this legislation would be to remove all references to freezing or reducing federal medicaid dollars for institutions whether state owned and operated or private profit or non-profit operated.

As you know, I have been a friend and loyal supporter of yours in the past. If I can be of future service to you with respect to this legislation or with respect to any other matter, please advise.

Your friend,



Melvin D. Heckt

MDH:ejt

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*ALSO ADMITTED IN WISCONSIN
**ALSO ADMITTED IN NEW MEXICO

June 23, 1988

U. S. Senator David Durenberger
12 S. 6th Street
Room 1020
Minneapolis, MN 55402

Ms. Mary C. Edwards
Health/Human Resource L.A.
12 S. 6th Street
Room 1020
Minneapolis, MN 55402

Re: The Medicaid Home and Community Quality Services Act
Senate S1673 H.R. 3454

Dear Dave and Mary:

Although the amendments which you mailed to me June 21 are definitely an improvement, these additions or amendments in my opinion do not meet the needs which I outlined for you last year.

I am somewhat handicapped in that I do not have the most up to date revised copy of the bill. However, I am satisfied that the bill apparently still freezes the size of community living facilities at a maximum of 15 and more importantly freezes the budgets of not only the seven of our State's nine institutions which serve people who are mentally retarded but also adversely affects the approximately 50 community residential facilities which have more than 15 beds.

I am also satisfied that this bill if passed will adversely affect the vast majority of especially adults who are profoundly or severely mentally retarded. They are not only receiving better care and a higher quality of care now in our larger facilities than they would in the little houses for two, three or four, but their care is very carefully monitored and I do not see how it is possible to have an effective monitoring system or proper training or proper peer cooperation among staff or the expert experienced

U. S. Senator David Durenberger
Ms. Mary C. Edwards
June 23, 1988
Page 2

medical and nursing and psychiatric personnel who now take care of our State institutional population.

I also believe that the current bill would become a budget buster. Bill Frenzel wrote me April 13 that the Department of Health and Human Services calls the bill a budget buster and the Congressional budget office says its a budget saver. Their estimates are only a billion dollars a year apart.

Politically, Dave, I realize you are under pressure to co-sponsor this bill. I assume this pressure is coming not only from some of your colleagues in the Senate but also from the ARC and from certain employees of the Minnesota Department of Human Services. However, I know that all of the nine communities in the State which now have State institutions have organized the chambers of commerce and the unions and all of the citizenry to fight for the retention of their regional treatment centers (State institutions). I also know that the 50 some community residential facilities for mentally retarded are extremely concerned about this bill and do not favor the adoption of same. I serve on the Board of Mount Olivet Rolling Acres and also on the Board of Directors of Laura Baker School and I can assure you that if legislation is adopted which freezes budgets for any facility in excess of 15 beds all of these people will likewise be very upset. I also believe from my knowledge of many members of the ARC, and I am still a member of the ARC, that they do not agree with the action of the ARC of Minnesota which recently adopted a resolution calling for the closure of all regional treatment centers in Minnesota. I think that the numbers of ARC members who would be upset if this bill were not passed is relatively small in comparison with the numbers of people that I previously mentioned who would be upset in the event that there was a statutory freeze on the budget and a rigid interpretation and a forced reduction or closure within the five year period.

I would like to just set forth herein a few of the objections or questions which I have noted with respect to my copy of the Senate bill above referred to.

1. It limits the bed limitation to three times the number of people in the average family household in the area, with the maximum 15.

2. If the facility in operation on September 30, 1987, it cannot increase its number of beds after such date. (Even though it may have fewer than 15 beds.

3. On page 20 of my copy it says as follows: "(3) The following services may not be included as community and family support services:

U. S. Senator David Durenberger
Ms. Mary C. Edwards
June 23, 1988
Page 3

d. Aversive behavior intervention, management or therapies. (I don't believe the senate wants to start practicing medicine. I'm certain that there are a number of people who can benefit from various types of aversive behavior therapy. Although many should not be subjected to this type of therapy.)

4. It states the community living facilities cannot be unduly concentrated in any residential area. (This is totally nebulous and from my experience mentally retarded people frequently do enjoy congregating with themselves. I know one couple who left Faribault and are now married and living in the City and spend all of their time on weekends going back to Faribault to do volunteer work for the reason that they are treated with dignity and respect at Faribault and are not so treated in Minneapolis.

5. Paragraph H on page 28 of my copy states that "Any individual with a severe disability for whom a public agency ~~starts~~ arranges placement will have an opportunity to reside in a family home, foster family home, or community living facility that is located as close to the home of their natural, adoptive or foster family of such individual as is consistent with the best interests of such individual" You will note that there is nothing in this bill or any other legislation that provides an individual of this type to have the right for the opportunity to reside or continue to reside in a community or State institution or ICFMR community facility.

6. Paragraph number three on page 36 states that the State plan must restrict admissions to residential facilities that are not family homes, foster family homes or community living facilities. This, of course, means that the State's plan must prevent admissions to the community and State institutions which can in fact provide the best and the most needed service for those individuals.

7. On page 40 of my copy it appears that within 58 months any person "who is determined to be in need of alternative residential placement - such individual is to be transferred from such facility." Now the real problem here is who is going to determine what person is in need of alternative residential placement. Based on some of our experience with the waived service plans now in effect, counties are utilizing their waived service money to take people out of institutions and put them into the little houses for one, two, three or four in order to use those funds and not lose those funds. The counties are not being careful about who goes into that home. They just want a body there so that the operator of the home can stay solvent and not go bankrupt.

U. S. Senator David Durenberger
Ms. Mary C. Edwards
June 23, 1988
Page 4

8. On page 47 of my copy, paragraph G, a waiver of freedom of choice required, it appears that any State may waive the freedom of parents and guardians to choose the ICFMR facility which would include most of the community facilities having more than 15 beds as well as the State institutions. I think this is a very, very bad feature of the law.

9. Paragraph 2 on page 49 of my copy sets forth the provisions for freezing the payments for service provided in large facilities. This of course, as I previously explained will result in the closure, I'm certain, of most of the 50 community residential facilities that have more than 15 beds as well as our State institutions and I think this would be very tragic for the State of Minnesota.

10. Unless I am misreading the above section, it appears that any CPI increase in excess of 6 per cent might be permitted to the larger facilities. So if you had an 8 per cent CIP increase you could increase the budgets of the State facilities and the larger facilities by 2 per cent.

11. I seriously question the provisions for the commencement of private lawsuits for people injured, adversely affected or grieved by violation of the act. These are to be brought in Federal Court.

Suffice it to say, Dave, I would be very happy to work with you with respect to making further changes in this particular bill, but I just don't think that now is the time to have this bill be submitted out for passage or for a vote. In the first place many of us have not been kept informed of the current revisions and I also know that I am a representative or spokesperson for an organization that is one of the 35 agencies called by the Minnesota Department of Human Services to meet every two weeks from now through October to determine the future role of the regional treatment centers in Minnesota. I, therefore, am convinced that more time must pass before this bill should be submitted for adoption.

As you know, my primary interest is in the needs of the people who are mentally retarded. There are some good portions of this bill. But there are too many adverse affects of this bill upon those who are profoundly and severely retarded.

Very truly yours,

Melvin D. Heckt
for
BASSFORD, HECKT, LOCKHART, TRUESDELL & BRIGGS, P.A.