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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-4329**

June 23, 2010

Secretary Kathleen Sebelius  
U.S. Department of Health and Human Services  
200 Independence Ave., SW  
Washington D.C. 20201

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SUBCOMMITTEE ON NATIONAL PARKS,  
FORESTS AND PUBLIC LANDS  
SUBCOMMITTEE ON INSULAR AFFAIRS,  
OCEANS AND WILDLIFE

**Re: Availability of Federal Financial Participation for Colorado's Private  
Community Corrections Residents**

Dear Secretary Sebelius:

Thank you for your response dated March 29, 2010, to my letter regarding the availability of Federal financial participation for Colorado's private community corrections. There are significant questions that remain unanswered and I write to request your continued attention to this issue.

In particular, I wanted to draw your attention to the fact that by HHS definition, Colorado's Community Corrections ("CC") are in fact private institutions. I also believe that the classification of the participants is not relevant to the central question being raised. For these reasons and others I expand upon below, I believe that Federal financial participation (FFP) for medical care should be available for all participants (both residents and non-residents) in Community Corrections programs.

In your March 2010 letter you rely on the 1997 and 1998 guidance stating that that public institutions include placements obtained through private contractors. However, the letters focus on private prisons being the contracted agency that qualify as a public institution, and that being run by a private company does not get an institution out from under a "public" classification. Colorado's CCs are not prison facilities, do not contract with the prison facilities or the Colorado Department of Corrections, which runs our prisons, nor in fact are they run by any governmental agency. As described below, Colorado's community corrections programs are unique and may be the only program of its kind in the nation. The State, specifically Colorado's Office of Health Care Policy and Finance, agrees with this analysis. As a result, the Department of Health and Human Services' analysis is confusing, and I hope you can clarify where in the 1997 and 1998 guidance it excludes FFP for the participants of our unique community corrections programs.

It is easy to assume that because Colorado's private community corrections programs appear to be related to the corrections system that they are "public institutions," thereby

disqualifying the residents from FFP. However, significant distinctions exist between our community corrections programs and the type of privatized prisons with which you may be familiar. Colorado's private community corrections programs differ in key aspects from most other states' half-way houses and other privately-contracted public institutions.

Practically speaking, the individuals who sleep at Colorado community corrections facilities are called "residents." The only physical tie the residents have to these private programs is that they sleep there most nights (unless they are sleeping at home because they have home passes) from anywhere from three to six months. At the expiration of their resident status, they sleep in their own homes. While they sleep at these facilities, they must work outside of the facilities to pay rent to the facilities, court costs, and restitution back to their victims. Unlike a prison, there is no paid work inside the facility. The "residents" are never in handcuffs. There are no locks on the doors and no safety towers. There are no guards and there is no fencing to maintain a privacy or safety perimeter. The employees and counselors that work at the CC's are not state employees, and they have no authority to arrest them if they do not return, or prevent a resident from leaving.

Colorado's community correction programs and participants are not related to the state Department of Corrections in any administrative sense. A separate state department oversees the community corrections policies, and no government agency actually administers the programs (discussed below).

Of the 35 residential community corrections facilities in Colorado, approximately three are non-medical institutions that are an organizational part of a governmental unit (most often a county), and therefore likely meet the definition of public institution. However, most community corrections facilities are operated by private, usually nonprofit organizations that contract with local community corrections boards, which receive funds from the Department of Public Safety (not the Department of Corrections), Office of Community Corrections. No governmental unit exercises final administrative control of Colorado's community correction facilities, including either ownership or control of the physical facilities and grounds used to house participants. These private organizations are responsible for the day-to-day operations of each facility, including the hiring and firing of employees. They, therefore, do not meet the definition of public institution, and FFP should be available for both residents and non-residents.

As you know, under federal law, two factors determine whether an otherwise eligible individual is excluded from FFP: the individual cannot be 1) an inmate or 2) residing involuntarily in a public institution. Therefore, even if you believe all or some of the community corrections participants are inmates, they would still be eligible for FFP funds if he/she is residing in a private institution. The letters you referred to make it clear upon further analysis that the participants in most Colorado CC's programs reside in private institutions, and therefore eligible for FFP. The 1997 and 1998 letters define a public institution as a facility under the responsibility of a governmental unit, or over which a governmental unit exercises administrative control. (Page 2 of both letters.) The letters list the following factors for determining whether a facility is governmentally controlled:

1. Actually an organizational part of a governmental unit, or

2. When a governmental unit exercises final administrative control, including ownership and control of the physical facilities and grounds used to house inmates, or

3. When a governmental unit is responsible for the ongoing daily activities of a facility, for example, when facility staff members are government employees or when a governmental unit, board, or officer has final authority to hire and fire employees.

As described above, Colorado's community corrections programs do not meet any of the above factors. They are not organizationally a part of a governmental unit, a governmental unit does not exercise final administrative control of the facilities, and a governmental unit is not responsible for the ongoing daily activities of the facilities.

I believe this issue can be resolved short of a protracted legal battle. The solution is to clarify that if an institution is run similar to Colorado's community corrections programs, then in fact it is a private institution and eligible for FFP. Please feel free to contact my Senior Health Policy Advisor, Heather Foster, at (202) 225-4431 if you have additional questions. I look forward to your continued assistance in resolving this matter.

Sincerely,



Diana DeGette  
Member of Congress