Congress of the United States
Washington, DC 20515

January 14, 2022

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

The Honorable Chiquita Brooks-LaSure
Administrator
U.S. Centers for Medicare & Medicaid Services
200 Independence Avenue SW
Washington, D.C. 20201

Dear Secretary Becerra and Administrator Brooks La-Sure:

We write to follow-up to our letter from June regarding an issue of great importance to our constituents. Millions of rural Americans depend on their local hospital to provide lifesaving care and treatments. Unfortunately, the unique challenges of serving remote areas have caused an increasing number of rural hospitals throughout the country to close their doors over the past decade. We are concerned that a policy change implemented by the Centers for Medicare & Medicaid Services (CMS) without clear rationale will accelerate this alarming trend and jeopardize access to care for many vulnerable populations, especially in rural areas.

Congress established the Critical Access Hospital (CAH) designation to reduce the financial vulnerability of rural hospitals and improve access to healthcare in rural communities. However, an arcane revision to the Medicare State Operations Manual (SOM) made in 2015 without public input has significantly narrowed the CAH eligibility criteria. This policy change will limit many hospitals from receiving or recertifying a CAH designation, undermining both the intent of this program and the future access of rural Americans to essential healthcare services.

Prior to July 31, 2015, CMS applied the following definition of "primary road" in determining if a hospital satisfied the distance criteria under the 15-mile, secondary road standard:

"To be eligible for the lesser distance standard due to the secondary road criteria under §485.610(c) the CAH must document that there are more than 15 miles between the CAH and any hospital or other CAH where there are no primary roads. A primary road is:

- *A numbered federal highway, including interstates, intrastates, expressways or any other numbered federal highway; or*
- *A numbered State highway with 2 or more lanes each way; or*
- *A road shown on a map prepared in accordance with the U.S. Geological Survey's Federal Geographic Data Committee (FGDC) Digital Cartographic Standard for Geologic Map Symbolization as a "primary highway, divided by median strip."*

Under this standard, many rural hospitals have been able to utilize CAH designation in order to provide critical access to care in their rural communities. Without this designation, each would face challenging external threats that restrict access to healthcare across rural America. The 2015 revision to section 2256A of the SOM issued by CMS on July 31, 2015, significantly expanded

the definition of "primary road," which has put in jeopardy the ability for many CAHs in our state(s) to maintain essential services in their communities; the revised SOM definition is below:

"To be eligible for the lesser distance standard due to the secondary road criteria under §485.610(c) the CAH must document that there is a drive of more than 15 miles between the CAH and any hospital or other CAH where there are no primary roads. A primary road is:

- *Any US highway, including any road:*
  - *In the National Highway System, as defined in 23 US Code §103(b); or*
  - *In the Interstate System, as defined in US Code §103(c); or*
  - *Which is a US-Numbered Highway (also called "US Routes" or "US Highways") as designated by the American Association of the State Highway and Transportation Officials (AASHTO), regardless of whether it is also part of the National Highway System;*

"All US highways are readily identified via signage along the roads and on maps by the presence of "US" or "I" above the highway number, with the letters and number appearing on a distinctive, uniform shield background that is called the six point shield, with five points above and one below. Note: Although the National Highway System and the U.S. Numbered Highway system largely overlap, they are not identical. According to the American Association of the State Highway and Transportation Officials (AASHTO), which is responsible for designation of roads in the U.S. Numbered Highway system, the system is intended to facilitate the movement of interstate traffic in two or more States with the use of uniform markings.

"Given the role all US highways are intended to play in interstate commerce, they are, by definition, primary roads:

- *A numbered State highway with 2 or more lanes each way; or*
- *A road shown on a map prepared in accordance with the U.S. Geological Survey's Federal Geographic Data Committee (FGDC) Digital Cartographic Standard for Geologic Map Symbolization as a "primary highway, divided by median strip."*

By inserting this expansive definition, the 2015 revision restricts eligibility for many hospitals to qualify as a CAH under the secondary road criteria and puts currently designated CAHs in our state that have not experienced any external changes or updates that would otherwise limit their eligibility at risk of losing their designation.

As a result of this new policy there are nine CAHs in New York State that may be ineligible to maintain their CAH status under the 2015 revision, resulting in a loss of approximately $35.6 million in reimbursements, threatening the financial viability of these facilities. These challenges are compounded by the ongoing COVID-19 pandemic, as many facilities may once again be forced to cancel elective procedures or implement other restrictive measures.

We appreciate that, in recognition of the pandemic and the damage that would be done by the new mileage definition, CMS has delayed using the new criteria for the purposes of recertification for the duration of the Public Health Emergency. However, CAHs across the country need long-term certainty that they will be able to maintain financial viability beyond the pandemic to ensure continued access to care for patients in small and rural communities.

We have made several contacts with CMS and the Department in an effort to address this matter in good faith. To this point however, we remain disappointed that our efforts, including our letter dated June 8, 2021, have gone unanswered. To provide Congress with much needed clarity on the impact of this policy change, we request responses to the following questions:

1. How many currently-designated CAHs may be ineligible for recertification due to the 2015 revision?

2. How many fewer hospitals nationwide meet the 15-mile distance requirement for secondary roads under the 2015 revision, compared with the pre-2015 standard?

3. How did CMS make the revised definition of "primary roads" issued in the 2015 revision known to CMS regional offices, states, and hospitals?

4. Does CMS have a plan in place to address potential closures of rural hospitals as a result of their loss of CAH designation?

Thank you for your prompt attention to this matter. We look forward to continuing to work with you to ensure these critical hospitals can indefinitely continue to provide care to the rural communities they serve.

Sincerely,

Elise M. Stefanik
Member of Congress

Antonio Delgado
Member of Congress

Chris Jacobs
Member of Congress

Sean Patrick Maloney
Member of Congress

Claudia Tenney
Member of Congress

Tom Reed
Member of Congress