

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
DON NICKLES, OKLAHOMA
TRENT LOTT, MISSISSIPPI
OLYMPIA J. SNOWE, MAINE
JON KYL, ARIZONA
CRAIG THOMAS, WYOMING
RICK SANTORUM, PENNSYLVANIA
BILL FRIST, TENNESSEE
GORDON SMITH, OREGON
JIM BUNNING, KENTUCKY

MAX BAUCUS, MONTANA
JOHN D. ROCKEFELLER IV, WEST VIRGINIA
TOM DASCHLE, SOUTH DAKOTA
JOHN BREAU, LOUISIANA
KENT CONRAD, NORTH DAKOTA
BOB GRAHAM, FLORIDA
JAMES M. JEFFORDS (I), VERMONT
JEFF BINGAMAN, NEW MEXICO
JOHN F. KERRY, MASSACHUSETTS
BLANCHE L. LINCOLN, ARKANSAS

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL
JEFF FORBES, DEMOCRATIC STAFF DIRECTOR

June 16, 2004

Mark McClellan, M.D., Ph.D.
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Administrator McClellan:

We are writing to you to express our continued questions regarding the Administration's use of the waiver authority under Section 1115 of the Social Security Act (1115 waiver authority) to approve fundamental changes to the Medicaid program. We understand that several states are developing waiver proposals in consultation with the Centers for Medicare and Medicaid Services (CMS) that, if approved, would modify the federal-state financing relationship and guarantees for beneficiaries that the Congress has enacted over the last four decades of the Medicaid program. In the exercise of our oversight responsibilities, we urge you to inform the Committee of the status and content of any proposals under development that rely on the 1115 waiver authority.

In correspondence with CMS and Secretary Thompson, and through our requests for General Accounting Office studies, we have shared our concerns about 1115 waivers. We hope that our communications on this subject have been productive, and we have been gratified to note that, since early 2002, 1115 waiver proposals are now publicly available on an improved CMS website. Notwithstanding these improvements, we believe that the waiver process still lacks adequate transparency. Press reports indicate that a new wave of waiver proposals are being developed that could dramatically reshape the financing and entitlement guarantees established by law in the Medicaid program. It is commonly understood that CMS is engaged in extensive pre-submission consultation with states on these waiver applications, yet there has been no official statement of CMS policy on such waiver proposals or any official recognition that changes to Medicaid of this magnitude are under consideration.

When you testified before the Committee at your nomination hearing on March 8, 2004, you commented on the fundamental nature of Medicaid's financing and eligibility system. For example, you stated that "I absolutely am committed to the fundamental principle in the law for Medicaid that this is a federal-state partnership, a federal-state matching program. . . . I think federal imposed caps on spending, things like that, are not envisioned as part of this structure." In response to a question about provisions of Medicaid that could not be waived, you said that "[t]he core principles include principles like the federal-state matching principle," and you agreed that entitlements "cannot be waived."

We appreciated your straightforward responses. However, we are concerned about reports describing active but private negotiations between CMS and several states on waiver programs that would cap enrollment and/or federal payments over the life of the proposed waivers. Based on these press reports, we understand that states including Florida, New Hampshire, Colorado, California, and Connecticut may be negotiating such waivers with CMS.


We have also obtained documents that appear to show that CMS staff have considered and commented on draft waiver proposals that could, among other things, impose enrollment caps and permit the use of waiting lists on optional and possibly mandatory populations; limit/eliminate the early periodic screening, diagnosis and treatment (EPSDT) benefit for children; and move to a defined contribution or voucher benefit design for certain populations.

These proposals, and similar ones, if approved and implemented, could potentially make fundamental changes to the Medicaid program in ways that Congress did not anticipate or intend. We strongly believe that, over time, these changes could have far reaching implications and debate over these changes should include the Congress and relevant stakeholders.

Accordingly, we ask that you provide the Committee with a detailed briefing about the status of negotiations or discussions with states regarding the development of waiver proposals that would cap federal spending, change the EPSDT benefit, or limit the entitlement to services for eligible individuals. We also ask that you provide an update on CMS policy with respect to considering or approving such waivers, including, if necessary, a clarification of any statements made at your nomination hearing. We hope that you would accommodate our request for a briefing by no later than July 10, 2004.

We hope to continue to engage in public and constructive oversight on Medicaid, the waiver authority, and the federal-state partnership. Thank you in advance for your efforts.

Sincerely,



Charles E. Grassley
Chairman



Max Baucus
Ranking Member