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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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CHAIRMAN

September 6, 2007

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

Dear Mr. Secretary:

The reauthorization of the Children's Health Insurance Program (CHIP) is one of our top priorities for this Congress. CHIP, along with Medicaid, has cut the low-income uninsured rate for children in this country by one-third. The recent Census estimates show the number of uninsured children under the age of 18 grew by 1 million between 2004 and 2006, which underscores the importance of CHIP reauthorization. The House-passed CHIP bill (H.R. 3162) would reverse this trend, protecting the coverage of six million children currently covered by CHIP and providing new coverage through CHIP and Medicaid for an additional five million children who were previously uninsured.

Over the past seven years, the Administration has neglected its duty to protect the health of America's children, resulting in the dire situation that millions of families face today in securing affordable health coverage for their children. The Administration has threatened to veto the House-passed legislation in an attempt to derail a successful reauthorization that would reduce the number of uninsured children in the United States. Worse yet, the directive from the Centers for Medicare and Medicaid Services (CMS), released on the evening of Friday, August 17, 2007, would further exacerbate the situation. The CMS directive would limit the flexibility of States to extend CHIP coverage to uninsured children whose families are unable to afford private insurance coverage. According to the National Association of State Medicaid Directors, children in at least 18 States would be adversely affected by the CMS directive.¹

The August 17 directive is a radical departure from current CHIP and Medicaid policy as set forth in Federal statute and CMS's own regulations. We are very concerned this directive would severely undermine the ability of States to make headway against the rising tide of uninsured and would result in tens of thousands of children losing their affordable insurance coverage.

¹ www.stateline.org "Medicaid Directors Object to SCHIP Rules," August 23, 2007.

CMS's sharp departure from existing policy is all the more egregious in that it was announced without any consultation with Congress, the States, or other stakeholders about the changes that were being considered or the nature of those changes.

It is very important that Congress understand the implications of and evidence behind CMS's radical policy shift that will further increase the number of uninsured children prior to the completion of CHIP reauthorization in September. In order to understand the implications of the August 17 directive for the CHIP program and the low-income children it covers, we request your response to the following questions by no later than September 14, 2007.

1. The CMS directive significantly changes the criteria for review and approval of State initiatives to provide low-income uninsured children with insurance coverage. The new directive requires States to make the following assurances:
 - Assurance that the State has enrolled at least 95 percent of the children in the State who are in families with annual incomes below \$34,340 for a family of three who are eligible for either CHIP or Medicaid;
 - Assurance that employer-sponsored coverage for children targeted by the State's program has not declined by more than two percentage points over the prior five-year period; and
 - Assurance that the State is current with all reporting requirements in CHIP and Medicaid along with monthly reports to prove that CHIP and Medicaid coverage is not causing employers to drop insurance coverage.
 - (a) Please provide a citation in the Federal statute or your own regulation where each of these tests appears both for States that have used their CHIP funds to expand Medicaid and for States that have operate a separate Title XXI program.
 - (b) Please cite each State that currently complies with each test.
 - (c) Please provide a list of the criteria used to approve State plans prior to the issuance of this guidance and a comparison of how each State will be affected under the new policy.
2. The directive indicates that States that currently provide healthcare services to children with annual family incomes over \$42,925 for a family of 3 will be expected to amend their program within 12 months to meet new requirements geared toward preventing employer-sponsored coverage from declining or no longer being offered, so called "crowd-out." States that wish to expand insurance coverage for children in families with annual incomes above \$42,925 for a family of 3 must meet new requirements in this regard as well.

- (a) Please identify each of the States that will be required to amend their current program to comply with the August 17 directive.
 - (b) Please identify each State that is currently planning to expand health insurance coverage to uninsured children that would be affected by the August 17 directive.
 - (c) For each affected State in (a) and (b) above, please inform the Committee of the number of children who would be affected and the amount of Federal Title XXI dollars at risk. If your list only includes States that have submitted State plans or 1115 waiver requests to CMS, please identify whether you are aware of other States that have enacted legislation to expand coverage but have not yet submitted a State plan amendment or section 1115 waiver request to CMS.
3. Half of all bankruptcies are caused by illness and medical debt, a problem pervasive even among those with insurance.² CHIP is intended to make insurance coverage more affordable for working families. Yet, the Administration's new guidance would appear to preclude States from protecting families from incurring potentially crushing out-of-pocket medical costs for children.
 - (a) What is the policy rationale for prohibiting States from protecting families from unaffordable out-of-pocket costs for children's health care?
 - (b) What studies or evidence did CMS use to develop and justify this new requirement that prevents States from ensuring coverage is affordable for all eligible children?
 - (c) Please describe the test that will be used to demonstrate that the cost-sharing requirements under a State's Medicaid or CHIP program is not better for children than the cost-sharing requirements under "competing private plans"?
 - (d) Which private plans will a State's coverage for children be compared to? Plans offered by employers? Plans offered in the non-group insurance market? Will there be any requirement that a plan used for comparison provide coverage to children?
 - (e) In order to make comparisons about the value of benefits or cost-sharing between different insurance products, actuaries must make certain assumptions with respect to utilization of services. Please describe the assumptions CMS will use in this regard.
4. According to data we have reviewed, few if any States will be able to meet the new CMS requirement that 95 percent of eligible children in families with annual incomes under \$34,340 for a family of 3 must participate in either the Medicaid or CHIP programs.³ For this reason, the House-passed CHIP bill (H.R. 3162) targeted resources to States

² U.S. News and World Report, "Medical bills lead to personal bankruptcy," February 2, 2005.

³ Georgetown University Health Policy Institute Center for Children and Families, "Medicaid/SCHIP Participation Rate Among Low-Income Children Under 19, 2004-2005," August 29, 2007.

explicitly for the enrollment of children in such families. Yet the Administration provides no new funding for States that increase enrollment of eligible children, potentially leaving States that raise their coverage levels to comply with the 95 percent standard without sufficient funding to cover those children.

- (a) Please provide us the basis for your determination that 95 percent was the appropriate level to select for this new policy.
 - (b) Given the chronic problems with the accuracy of both current population survey (CPS) and American Community Survey (ACS) data, please identify the data sources a State may use in order to satisfy CMS that this 95 percent standard is met.
 - (c) Will States with existing programs that cover children within families with annual incomes above \$42,925 for a family of 3 be required to roll back their eligibility levels for children if they do not comply with all of the new conditions imposed, including the 95 percent participation rate?
 - (d) Given that few if any States will meet this new 95 percent participation test, please explain the statement in the last paragraph of the letter that CMS does not "expect any effect on current enrollees"?
5. Congress and the States have extensively reviewed the issue of "crowd-out" -- families substituting public coverage for employer-sponsored coverage -- over the course of the CHIP program. The Bush Administration's own 2001 report found that "crowd-out" is not a problem and CHIP is primarily serving children who would otherwise be uninsured.⁴ Professor Jonathan Gruber, renowned "crowd-out" expert, has found that expanding coverage through public programs such as CHIP and Medicaid would have significantly less crowd-out than tax-based approaches such as those advocated by President Bush.⁵ Yet, the CMS directive requires States to adopt a number of new procedures purported to address this issue. One such requirement in the new directive would force children to spend one year without any insurance coverage prior to receiving CHIP coverage.
- (a) Please provide the data and other evidence in literature CMS used to justify the imposition of this new requirement that children must forgo insurance coverage for one year.
 - (b) Please identify the specific provision in Federal statute and in CMS regulations where this one-year uninsurance period is expressly set forth.
 - (c) Please list each State that currently complies with this requirement that children forgo insurance coverage for one year.


⁴ J. Wooldridge, G. Kenney, C. Trenholm, *et al.*, "Congressionally-Mandated Evaluation of the State Children's Health Insurance Program," U.S. Department of Health and Human Services, conducted by Mathematica Policy Research and the Urban Institute, Oct. 25, 2005.

⁵ Letter from Professor Gruber to Chairman John D. Dingell, February 28, 2007.

- (d) Please explain what medical or other benefit children will gain from being forced to forgo medical coverage for an entire year.
 - (e) Please describe the requirements of the one-year waiting period. Under what circumstances, if any, will exceptions be permitted?
6. The CMS directive would also require States to provide assurances that employer-sponsored coverage has not declined for children targeted by the State's program by more than two percentage points over the previous five years.
- (a) Does CMS have State-level data on private coverage changes over the past five years? If so, please provide this to the Committee.
 - (b) Please identify the basis for selecting the two percent standard adopted in the CMS directive.
 - (c) Please identify the specific data sources that a State may use in order to satisfy CMS that the 2 percentage point standard is met.
 - (d) Will CMS allow exceptions to the 2 percentage point standard, for example if a large employer in the State went out of business causing a pronounced drop in the number of children without health coverage?

If you have questions regarding this request, please contact us or have your staff contact Bridgett Taylor or Amy Hall with the Committee on Energy and Commerce staff at (202) 225-2927.


Sincerely,



John D. Dingell
Chairman



Bart Stupak
Chairman
Subcommittee on Oversight and Investigations



Frank Pallone
Chairman
Subcommittee on Health