

HENRY A. WAXMAN, CALIFORNIA
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
EDOLPHUS TOWNS, NEW YORK
FRANK PALLONE, JR., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
ELIOT L. ENGEL, NEW YORK
GENE GREEN, TEXAS
DIANA DEGETTE, COLORADO
VICE CHAIRMAN
LOIS CAPPS, CALIFORNIA
MIKE DOYLE, PENNSYLVANIA
JANE HARMAN, CALIFORNIA
TOM ALLEN, MAINE
JAN SCHAKOWSKY, ILLINOIS
HILDA L. SOLIS, CALIFORNIA
CHARLES A. GONZALEZ, TEXAS
JAY INSLEE, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE ROSS, ARKANSAS
DARLENE HOOLEY, OREGON
ANTHONY D. WEINER, NEW YORK
JIM MATHESON, UTAH
G.K. BUTTERFIELD, NORTH CAROLINA
CHARLIE MELANCON, LOUISIANA
JOHN BARROW, GEORGIA
BARON P. HILL, INDIANA
DORIS O. MATSUI, CALIFORNIA

ONE HUNDRED TENTH CONGRESS

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

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER
RALPH M. HALL, TEXAS
FRED UPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
BARBARA CUBIN, WYOMING
JOHN SHIMKUS, ILLINOIS
HEATHER WILSON, NEW MEXICO
JOHN B. SHADEGG, ARIZONA
CHARLES W. "CHIP" PICKERING, MISSISSIPPI
VITO FOSSELLA, NEW YORK
ROY BLUNT, MISSOURI
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO MACK, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE FERGUSON, NEW JERSEY
MIKE ROGERS, MICHIGAN
SUE WILKINS MYRICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE

August 21, 2008

DENNIS B. FITZGIBBONS, CHIEF OF STAFF
GREGG A. ROTHSCHILD, DEPUTY CHIEF OF STAFF
AND CHIEF COUNSEL

The Honorable Michael O. Leavitt
Secretary
Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201-

Dear Secretary Leavitt:

We write to express our concerns regarding a proposal recently submitted by the State of Rhode Island to modify its Medicaid program through a Section 1115 waiver. As you know, the Section 1115 Medicaid and SCHIP waiver approval process has been the subject of ongoing criticism. This is due to the lack of transparency and public input in the waiver development process, the use of these waivers to erode statutory protections for beneficiaries, and concerns with the fiscal integrity of programs operating under these waivers. These problems were outlined in recent reports issued by the Government Accountability Office (GAO) from July 2007 and January 2008.

The recent waiver proposal submitted to the Centers for Medicare and Medicaid Services (CMS) by the state of Rhode Island raises these same concerns. We believe the waiver, in its current form, will harm beneficiaries by denying or restricting access to needed health coverage or care and will be detrimental to the long term success of the Federal-State Medicaid partnership.

With respect to the erosion of protections for beneficiaries, the State is proposing to increase health care costs for beneficiaries to access needed care above the levels established under current law. The state is also asking for the unfettered flexibility to cut back on eligibility and services, including establishing waiting lists, without government approval. These changes run counter to the Medicaid law which guarantees access to health care for low- and moderate-income Americans. Moreover, with respect to children, we are concerned that some children may be affected in a way that is inconsistent with the statutory requirement that states provide the benefits they need through Early Periodic Screening Detection and Treatment (EPSDT) services for children.

Rhode Island is also asking to place a global spending cap on its entire program, turning it into a block grant. A block grant like this has never been allowed in Medicaid, and we do not believe that the Federal Medicaid statute authorizes approval of Rhode Island's proposal. In addition, such a proposal runs contrary to the intent and nature of the Medicaid program. Medicaid was designed to ensure that all those who met the program's requirements could access coverage and care. By capping funding, there is no guarantee that all beneficiaries who are eligible will be able to access needed care.

The proposal also raises troubling fiscal integrity concerns. It would shift costs from the State to the Federal government, increasing the Federal share without proper oversight or accountability. Over time, the State's contribution to the Rhode Island Medicaid program would actually decrease as a share of total spending on the Rhode Island program, and the Federal share of Medicaid spending on that program would increase. The structure Rhode Island is proposing would increase Federal health care costs and undermine the Federal-State partnership that is integral to the current Medicaid program.

With respect to concerns about transparency and public input, while the State has publicly posted its proposal on the web, much of the negotiation of the final details will occur in private between the Federal government and the State. As GAO noted in their two reports, there is no opportunity for public input into the terms and conditions of the waiver at the Federal level. Given the magnitude and unprecedented nature of the changes being contemplated to the Medicaid program through this waiver, the lack of transparency is particularly troubling. If the Department considers this waiver proposal, we believe that given the unprecedented changes it seeks to make, a public comment process at the Federal level is necessary.

We trust that you will give these concerns serious consideration as you review the details of Rhode Island's proposal. We do not believe the waiver can be approved in its current form. Finally, given wide-ranging concerns about the process and the substance of this proposal, we expect that you will provide an opportunity for input as you review this waiver, and that you will allow enough time for a thorough and thoughtful process.

Sincerely,



John D. Dingell



Frank Pallone, Jr.



Patrick J. Kennedy



James R. Langevin