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May 15, 2002

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

Dear Secretary Thompson:

On April 17, I wrote to you with Senator Jack Reed, Congressman Robert Menendez, and Senator Robert Torricelli to express concern about a potential change in CMS policy that would alter a longstanding requirement for universal screening of children for lead poisoning in the Medicaid program.[1] I have just received your reply dated May 14. I am pleased to receive your assurance that this change, which would have turned screening over to states without substantial federal oversight, has not been made.

I was also pleased to read CMS Director Scully's statement in today's *Washington Post* that the Administration has "no intention of changing the policy on lead poisoning."[2] I appreciate your commitment to rely on the expertise of CDC for policy recommendations on lead screening for the Medicaid program in the future.

This is the appropriate way to deal with this serious public health problem. As you are aware, lead poisoning is at once a frightening and insidious environmental threat to children's health. Acute lead toxicity can cause seizures and death, and chronic exposure is associated with developmental delay and delinquent behavior.[3] Lead poisoning is concentrated among children in the Medicaid program. About four of five U.S. children with blood lead levels over 20, an

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[1]Letter from Congressman Waxman, Senator Reed, Congressman Menendez and Senator Torricelli to Secretary Thompson (Apr. 17, 2002).

[2]*Plan to Ease Lead Testing Regulations Disavowed*, Washington Post (May 15, 2002).

[3]Herbert Needleman, Julie A. Riess, Michael J. Tobin, Gretchen E. Biesecker, and Joel B. Greenhouse, *Bone Lead Levels and Delinquent Behavior*, Journal of the American Medical Association, 363-369 (Feb. 7, 1996).

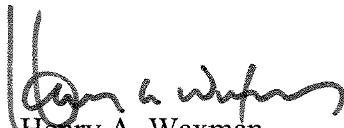
exposure associated with adverse effects on learning, are enrolled in Medicaid.[4] It is for these reasons that federal guidelines have for more than a decade required that children in Medicaid obtain a blood lead screening.

I am aware that officials in CMS have denied that the change in policy we were concerned about in our earlier letter was contemplated. However, a recording of the March 12 meeting of the Advisory Committee on Childhood Lead Poisoning Prevention indicates otherwise. I have attached excerpts of the transcript so that you understand what gave rise to our concerns.

I welcome today your clear assurance that such changes have not been made and that the Administration has no intention to make such a change. I also appreciate your affirmation of Secretary Shalala's policy of relying on expert guidance before making changes in lead screening policies. These are important assurances for protecting the health of America's children.

Thank you for your attention to this matter. I look forward to continuing to work with you.

Sincerely,



Henry A. Waxman
Ranking Minority Member

Enclosure

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[4]General Accounting Office, *Medicaid: Elevated Blood Lead Levels in Children*, 4 (February 1998).

Addendum: The March 12 Meeting of the
Advisory Committee on Childhood Lead Poisoning Prevention

On March 12, 2002, the Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP) met in Baltimore, Maryland. One item on the agenda of this longstanding CDC advisory committee was to discuss progress in the development of a policy on Medicaid screening. The committee discussed an idea to allow states to apply for a "lead screening exception" or LSE to universal screening. To be approved, states would have to present valid data about the risk of lead poisoning for children in different geographic areas. If approved, the state Medicaid programs would then be subject to an independent evaluation to assure that the targeting strategy was both reasonable and implemented correctly.

During the ensuing discussion, a CMS official, Dr. Jerry Zelinger, who is an ex officio member of the ACCLPP, spoke for the Administration on the committee's idea. According to the tape recording of the meeting, he said:

> I guess I might just reply from the CMS perspective. I think the Administration is going to view this as really way out of balance, actually.

He explained that in the view of the Administration, the committee's idea, which has yet to be finalized into a recommendation, included too much federal oversight:

> [S]etting up a construct that would for the first time . . . require CMS and federal oversight, approval of plans in this way . . . is something that is not very plausible in the present climate. . . . [T]he mantra that is consistent with the current administration is state flexibility, state flexibility, state flexibility where at all possible.

The CMS official then described the new policy under consideration at CMS:

> What they are considering now -- and they want to vet this policy throughout the Department, talk with certainly to CDC as we have been doing, formally vet this to the Department, roll it out with Congress, and so on -- is to give states flexibility to do screening of the highest risk kids in their area in consultation with local health departments and CDC grantees in their state.

Another committee member then asked the CMS official to explain how his agency would implement this idea. He replied:

> [I]t would be to change our CMS policy about Medicaid screening and allow the states to determine in consultation with their health departments and CDC grantees how and where to screen.

This announcement of a potential change in CMS policy dominated the committee's discussion for the next hour. Members expressed concern that leaving the decision on screening

entirely to states without substantial federal oversight would undermine protections for children in the Medicaid program. For example, here is one exchange:

> Committee Member: So do you even see an application process or do you just see "do whatever you want, states"?
>
> CMS Official: No, I think I stated . . . the option being considered is to allow the states to develop their own screening plans in conjunction with the health department working in consultation with the [health] department and CDC grantee in their state. So it's going to be kind of a cooperative thing but . . . the state would be technically required to work with the other components and we would see how that would play out.
>
> Committee Member: So they would be required to collaborate but CMS would not approve--
>
> CMS Official: Right, there wouldn't be that level of oversight of what the state decides to do.
>
> Committee Member: Wow.

Demonstrating the lack of federal oversight in the administration's proposal, the CMS official said:

> I really don't see the federal oversight to this degree as has been talked about in the evaluation component [by the committee] as being something that's real practical or something that CMS is going to embrace.

One of the CMS official's last comments indicated that an announcement of a new lead screening policy might be imminent. He said, "I think that behooves us in CMS to get this underway quickly which we had planned to do in terms of rolling this out and talking to the groups that we have to. I think that's important."