U.S. SENATE COMMITTEE ON
Finance
SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN
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For Immediate Release
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Grassley Specifies Intent of Two Medicaid Provisions in Deficit Reduction Act

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, along with Rep. Joe Barton, chairman of the House Committee on Energy and Commerce, have made clear the intent of Medicaid cost-sharing and benefit flexibility provisions enacted through the *Deficit Reduction Act*. Grassley and Barton wrote to the Health and Human Services secretary to make congressional intent crystal clear in light of alternative interpretations from critics of the provisions. The text of their letter follows.

March 29, 2006

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

Dear Secretary Leavitt:

We want to take this opportunity to reinforce Congressional intent with regard to two critical provisions of the Deficit Reduction Act of 2005, S. 1932.

Cost sharing and premiums

Section 6041 of the Deficit Reduction Act establishes a new section 1916A in Title XIX of the Social Security Act, which provides States a limited option to apply increased cost sharing to a limited set of beneficiaries and services. This authority to change cost sharing does not apply to any beneficiary below 100% of FPL.

Under the new section 1916A, the option to increase cost sharing may only be exercised "consistent with the limitations established," and the limitations specified in this section describe those conditions under which States may change cost sharing under this provision.

Section 1916A(b), as added by the Deficit Reduction Act, sets forth the limited conditions under which new cost sharing authority may be applied. Section 1916A(b)(1) strictly ***limits*** *increased cost sharing to beneficiaries between 100 percent of the federal poverty level (FPL) and 150 percent FPL*

and specifies the upper limits of the cost sharing that may be applied. Further, section 1916A(b)(2) authorizes changes in cost sharing only for those Medicaid beneficiaries whose income exceeds 150 percent of FPL and specifies additional upper limits on cost sharing that may be applied. Finally, section 1916A(b)(3) provides additional limitations by population and service. For anyone below 100 percent of FPL, the cost-sharing requirements under sections 1916 and 1902(a)(10)(B) continue to apply because 1916A contains no express grant of authority to override existing requirements with respect to that population. This interpretation of the application of section 1916A is consistent with long-established rules of statutory construction. Congress should not be presumed to have intended to have made so fundamental a change to the Medicaid program as allowing the imposition of unlimited cost sharing on the lowest income Medicaid beneficiaries while imposing clear limits on higher income beneficiaries, without expressly providing States with that authority in the legislative language.

EPSDT

Section 6044 establishes a new section 1937 in Title XIX, which allows States the option to provide a benefit package that meets a benchmark standard or benchmark equivalent standard of coverage for certain Medicaid beneficiaries. Under this section, States are required to provide Early and Periodic Screening Diagnostic and Treatment (EPSDT) services to children under 19 years of age enrolled in benchmark coverage or benchmark equivalent coverage.

Specifically, section 1937(a)(1)(A) contains two related provisions. First, section 1937(a)(1)(A)(i), provides that States choosing to provide coverage under this section must provide benchmark coverage or benchmark equivalent coverage in the case of beneficiaries for whom a benchmark is an option. Second, section 1937(a)(1)(A)(ii), provides that in the case of children under age 19 receiving benchmark coverage or benchmark equivalent coverage, states must cover "wraparound" benefits to the benchmark coverage or benchmark equivalent coverage consisting of EPSDT services and benefits specified in section 1905(r). In other words, an EPSDT "wraparound" consisting of all benefits and services enumerated in section 1905(r) is a requirement for states electing the benchmark option or benchmark equivalent coverage. The use of the term "wraparound" in this section should not be confused with the optional "wraparound" flexibility afforded states under section 1937(a)(1)(C) . This section allows states to offer one or more "wraparound" benefits to enrollees, who otherwise would be limited to benchmark or benchmark equivalent coverage. EPSDT is not an option.

It is our expectation that, in providing guidance to States regarding the DRA generally and section 1937 in particular, the Department of Health and Human Services and the Centers for Medicare and Medicaid services will explain the EPSDT requirements that states electing benchmark coverage or benchmark equivalent coverage must meet. We also insist that CMS reject any state plan amendment involving benchmark coverage or benchmark equivalent coverage that does not also provide for wraparound EPSDT services and benefits to individuals under age 19. In enacting section 1937(a)(1)(A), Congress intended to make no changes to EPSDT coverage. Consistent with section 1902(a)(43)(A) of the Social Security Act, EPSDT remains a required benefit to all individuals under the age of 19 who have been determined eligible for Medicaid and, if the state elects to provide coverage, up to the age of 21. States are permitted, however, to provide EPSDT benefits directly to Medicaid beneficiaries or they may also provide these benefits in whole or in part by the benchmark provider. Regardless of the arrangement, States are required to provide the same EPSDT benefits as currently interpreted in law prior to the enactment of the Deficit Reduction Act.

We expect to work with you very closely during the implementation of this very important legislation and look forward to joining your efforts to improve health care for all Americans.

Sincerely yours,

Charles Grassley	Joe Barton
Chairman	Chairman
Senate Committee on Finance	House Committee on Energy and Commerce

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