



For Immediate Release
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**SENATORS ASK HEALTH AND HUMAN SERVICES SECRETARY
FOR MORE TRANSPARENCY IN WAIVER PROCESS FOR
MEDICAID AND CHILDREN'S HEALTH INSURANCE PROGRAM**

*Baucus, Rockefeller, Reed, Whitehouse, want more room for public comment on
programs that get health care to low-income Americans*

Washington, DC – Senate Finance Committee Chairman Max Baucus (D-Mont.), Senator Jay Rockefeller (D-WV), Senator Jack Reed (D-RI), and Senator Sheldon Whitehouse (D-RI) joined today in writing a letter to Secretary of Health and Human Services (HHS) Michael Leavitt urging him to expand opportunities for public comment on waivers for Medicaid and the State Children's Health Insurance Program (SCHIP). The Secretary has the authority to waive federal regulations that apply to Medicaid and SCHIP, and HHS has written policies and procedures for waiver review that require public input and transparency. But a recent letter from the Government Accountability Office has shown that HHS no longer follows these policies, which has limited the public's ability to provide valuable input.

"It is essential that the public has access to the waiver review process for SCHIP and Medicaid," Baucus said. **"HHS has acknowledged that public input promotes sound decision making, but at the same time it has stymied the process. I join my colleagues in urging Secretary Leavitt to give the public more time and more meaningful ways to comment on waiver proposals. That is the best way to make sure that the Children's Health Insurance Program stays open and responsive to the families it serves, and gets low-income children the doctor's visits and medicines they need to stay healthy."**

"The domestic legacy of this Administration will be measured in the relentless and misguided attacks on Medicaid and CHIP. Together, these two programs are aimed at helping our most vulnerable people – children, seniors, pregnant women, the disabled, and quite frankly, the poorest of the poor – obtain the health insurance and basic medical care they need to live productive lives," Rockefeller said. **"The Administration has consistently twisted the regulatory process so that decisions are made behind closed doors, denying stakeholders a chance to voice their concerns. That's goes against the grain of good government. If the Administration truly believes that its proposals have merit, then it should not consistently prevent full, open and public debate. Transparency should be the guiding principle instead of administrative fiat."**

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“Before the federal government makes changes that will profoundly impact families’ health care coverage, it should let them know how they may be affected and give the public a chance to weigh in. Posting a proposal on a website and approving it days later is not meaningful transparency, and it is no way to make a decision with very significant impacts on states’ long-term finances. These decisions affect thousands of people and they should be given the opportunity to have their voices heard. Stakeholders and beneficiaries provide an important perspective that must not be ignored,” said Reed.

“The Bush Administration and its allies have repeatedly tried to undermine or dismantle the vital, badly-needed programs that keep our children and our neediest families healthy,” said Whitehouse. **“Americans need to know how enormous changes to their health care will affect them, and to have the chance to raise objections or concerns, before those changes take effect.”**

The text of the Senators’ letter follows here.

June 19, 2008

Via Electronic Transmission

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

Dear Secretary Leavitt:

As you know, Section 1115 of the Social Security Act allows the Secretary to waive certain federal requirements that apply to Medicaid and the State Children’s Health Insurance Program (SCHIP). Such waivers may involve far-reaching and complex policy changes that could have a significant impact on beneficiaries. They could also set precedent for future waivers. For these reasons, waiver proposals require a thorough and transparent review that includes the input of stakeholders at both the state and federal level. We are concerned that the Department generally, and the Centers for Medicare & Medicaid Services (CMS) specifically, have failed to implement such a process.

In 1994, the Department published policies and procedures for reviewing waiver proposals in the Federal Register, which included notice and comment at both the state and federal level. Specifically, HHS stated:

The Department recognizes that people who may be affected by a demonstration project have a legitimate interest in learning about proposed projects and having input into the decision-making process...A process that facilitates public involvement and input promotes sound decision-making. 59 FR at 49250.

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We wholeheartedly agree. We also note that since 1994, no law, regulation, or published policy has reversed the 1994 policy. However, HHS has indicated to the Government Accountability Office (GAO) that it no longer follows the 1994 policy, and that current Department policy is to post waiver proposals on its website prior to approval. Unfortunately, according to a July 24, 2007 letter to Members of Congress, the GAO found that HHS did not even fulfill this basic requirement for transparency before it approved comprehensive waivers for Florida and Vermont.

The GAO has repeatedly found that there is no opportunity for public comment on pending waiver proposals. Stakeholders have reported that they did not have specific information or sufficient time to review and comment on proposals. In Vermont, stakeholders reported that they were only presented with the broad concepts of the proposed global waiver, which lacked specifics on the methodology used to project savings, implementation, and the effects on beneficiaries. Accordingly, the GAO has repeatedly recommended that Congress take action to ensure that individuals affected by waivers have an adequate opportunity to review and comment on proposals before they are approved.

Similarly, in 2006, the final report of the Medicaid Commission – whose members you appointed – recommended compliance with the existing policy for notice and comment. The Commission found that information and perspectives offered during public comment periods constitute important feedback.

Despite this broad consensus regarding notice and public comment, waiver negotiations are currently conducted largely behind closed doors. The problem with this lack of transparency is exacerbated by the fact that waivers may be approved within days. As a result, beneficiaries and other stakeholders may be unaware of a waiver proposal until after it has already been approved.

We strongly urge you to ensure a meaningful opportunity for public notice and comment on all Medicaid and SCHIP waiver proposals submitted to the Department for consideration – both formally and informally. We further request information on current Department and/or CMS policies related to this issue, as well as the steps that you will take immediately to improve the process.

Thank you for your assistance in this matter. We look forward to your response no later than July 11, 2008.

Sincerely,

Max Baucus

John D. Rockefeller, IV

Jack Reed

Sheldon Whitehouse

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