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Grassley Objects to Medicaid, Tax Provisions' Inclusion in Supplemental Spending Bill

WASHINGTON – Sen. Chuck Grassley, ranking member of the Committee on Finance, today expressed strong objection to the inclusion of Medicaid and tax provisions in the supplemental spending bill under development by appropriators. Grassley outlined his views in a letter to the chairman and ranking member of the Senate Appropriations Committee.

Grassley said both Medicaid and tax policies are solely the Finance Committee's jurisdiction, and he objects to the inclusion of those items in a spending bill without the Finance Committee's direct involvement. In particular, Grassley outlined his opposition to a provision that would delay the Centers for Medicare and Medicaid Services' attempt to rein in problems with states' inappropriate use of Medicaid funds.

“Legislating to prevent CMS from cleaning up intergovernmental transfers scams on this appropriation bill sets a bad precedent. That is clear. It is legislation on Medicaid, and that is a basic part of the jurisdiction of the Finance Committee,” Grassley wrote.

The text of his letter follows.

May 15, 2007

The Honorable Robert C. Byrd
Chairman
Committee on Appropriations
United States Senate
Hart Senate Office Building – Room 311
Washington, DC 20510

The Honorable Thad Cochran
Ranking Member
Committee on Appropriations

United States Senate
Dirksen Senate Office Building – Room 113
Washington, DC 20510

Dear Chairman Byrd and Ranking Member Cochran:

I am writing to express my continued opposition to the consideration of any provision concerning intergovernmental transfers/cost based reimbursement by the Committee on Appropriations for the supplemental appropriation bill we will be voting on shortly. I am also opposed to the inclusion of tax provisions that passed separately through the Senate as part of the supplemental appropriations. As you know, the Medicaid matter pertains to programs under the Social Security Act and the tax provisions amend the Internal Revenue Code. Both the Social Security Act and the Internal Revenue Code fall clearly and solely within the jurisdiction of the Committee on Finance.

Throughout the years, the Committee on Finance has worked to safeguard and improve the programs under its jurisdiction, including the Medicaid program. The Finance Committee has unique expertise with these programs and is the only Committee in the position to assess the possible effects of individual changes on all Social Security Act programs as a whole. Any requests for additional changes to these programs must be examined with great care, and the Committee on Finance is the only Committee with experience necessary for this task. Accordingly, the Committee will legislate to modify these programs only after thorough analysis of the issues involved and potential solutions.

The proposed intergovernmental transfers/cost based reimbursement provision in question is case in point of why it should not be considered in an appropriations bill. This provision would halt the implementation of a Department of Health and Human Services (HHS) regulation on cost based reimbursement. The regulation addresses the questionable practice of states recycling Medicaid funds paid to providers. The Government Accountability Office (GAO) has opined numerous times about the inappropriateness of the practice and the Finance Committee has worked to expose it as well. Restricting payments to cost and requiring claims documentation both are in the best interest of the integrity of the Medicaid program, and forbidding HHS from acting in these areas is extraordinarily short-sighted. In fact, the Administration believes the new rule will save \$5 billion over the next five years. Clearly, halting implementation will have an impact on Medicaid resources and, therefore, decisions that have such an impact are more appropriate for the Finance Committee.

Certainly, a one-year moratorium is an improvement over the two-year moratorium that was in the bill that was originally passed by the Senate, but the language in the bill still encourages states to push the envelope on payment schemes. If a state submits a proposed waiver or state plan amendment that is in contravention with the regulation, the agency will not have the authority to deny the proposal. This is a provision written for the benefit of special interests so they can avoid real scrutiny of their financing arrangements. This provision will encourage states to offer payment schemes that CMS has previously disallowed as being inappropriate. It will encourage litigation if CMS tries to assert that they do still maintain jurisdiction.

The inspector general has investigated and reported to Congress on why there are problems in the areas the rule addresses. The Finance Committee has not had the first hearing on why the rule doesn't work and must be stopped.

The way that this provision is paid for is equally problematic. The extension of the Wisconsin pharmacy plus waiver is an unnecessary earmark. Every state but Wisconsin has changed their pharmacy assistance program as the MMA required. Furthermore, the way the language is written sets a very bad precedent. The language is written in a way that alters Medicaid's budget neutrality test. It's written to guarantee that it appears to save money. The reality is that Wisconsin will be providing many poor seniors with less of a benefit than they could get through Part D. Wisconsin charges greater cost-sharing than Medicare for low income seniors.

Legislating to prevent CMS from cleaning up intergovernmental transfers scams on this appropriation bill sets a bad precedent. That is clear. It is legislation on Medicaid and that is a basic part of the jurisdiction of the Finance Committee.

I am also concerned that the supplemental appropriation includes tax provisions which also fall solely in the jurisdiction of the Finance Committee. The power of the purse, appropriations, is Congress' power and we are directly accountable to our constituents for our spending actions. In that vein, I deeply respect the deep traditions of the Appropriations Committee. As a former Chairman, and now, Ranking Member of the Finance Committee, I deeply respect that division of power. The power to tax is our power and we are directly accountable to our constituents for our taxing actions.

We should rarely mix the jurisdiction of the two great money committees. It should only occur, if at all, when the four senior members of the tax writing and appropriations committees agree. Mixing tax writing and appropriations jurisdiction should not occur at the whim of leadership. Those kinds of actions demean the committees. Fortunately, I insisted and the leadership respected this division of jurisdiction between the tax writers and appropriators over the last six years.

Earlier this year, the Senate acted on the minimum wage bill/small business tax relief bill after the House had passed its own version of the bill. We worked with our House counterparts to resolve differences between the two bills. However, because of a bicameral Democratic Leadership obsession with a top-line number on the tax side, the conference options were severely limited. Chairman Baucus was able to accommodate far less than half the tax policy the Senate sent to conference. The Senate's authority was limited by the Leadership decision to attach the bill to the supplemental appropriations bill where Chairman Baucus was not a conferee. Legitimate tax policy proposals on the revenue losing and revenue raising sides were left on the conference's cutting room floor.

The composition of the final package is heavily weighted towards an extension and modification of the work opportunity tax credit. I support that credit. But the benefits of that policy are delayed. Small businesses need the tax relief to be in synch with the time the minimum wage kicks in.

Both of these outcomes do not reflect a proportionate agreement between the House and Senate bills. The arbitrary ceiling on the amount of tax relief was not a fair balance.

I appreciate your Committee members' interest in the Social Security Act programs and the Internal Revenue Code. I ask that they work with the Committee on Finance to see that their objectives are examined and addressed at the appropriate time, in the appropriate setting. Thank you for your assistance.

Sincerely,

Charles E. Grassley
Ranking Member

cc: Max Baucus
Chairman, Committee on Finance