

United States Senate
Committee on Finance
Washington, D.C. 20510

For Immediate Release
Thursday, August 16, 2007

Grassley, Roberts call on Administration to take consistent approach with SCHIP eligibility

WASHINGTON — Sens. Chuck Grassley and Pat Roberts today called on the Administration to reject a request from the state of New York to allow New York’s Children’s Health Insurance Program (SCHIP) – which is a federal-state program designed to get health insurance to low-income children – to cover families with annual incomes as high as \$82,600.

In a letter sent to the Secretary of Health and Human Services, Grassley and Roberts pointed out the irony of the Administration’s criticism of the Senate-passed legislation to reauthorize SCHIP for “expanding” SCHIP to incomes of \$82,600 a year when, in fact, the only state even attempting to make eligible that income level is New York, and the only way New York can expand eligibility to \$82,600 is if the Administration approves the state’s application for a waiver.

The Grassley-Roberts letter says the Administration should disapprove of the New York proposal because it is inconsistent with the intent of SCHIP to provide health insurance to children from low-income families.

In July, senators voted 68 to 31 for bipartisan legislation to reauthorize the SCHIP program. Grassley and Roberts backed the legislation as members of the Finance Committee.

_____The text of the letter they sent is below, along with the text of letters they sent earlier this summer regarding Administration-approved waivers for states to expand SCHIP eligibility to higher income levels and adults. A copy of Secretary Michael Leavitt’s July 31, 2007 letter is posted with this news release at <http://finance.senate.gov>.

August 16, 2007

The Honorable Michael O. Leavitt
Secretary
United States Department of Health and Human Services Washington, D.C. 20201

Dear Secretary Leavitt:

Thank you for your timely response to our letter regarding the State Children's Health Insurance Program waivers. Your letter raises some additional issues that require further consideration and that is the purpose of this letter in response.

We appreciate learning about the Department's plan to transition adults out of the State Children's Health Insurance Program (SCHIP) and into Medicaid. As we have communicated, these waivers should never have been approved and we are pleased that the Department is taking long overdue steps to correct this policy. We look forward to verifying that 55% of all adults currently covered by SCHIP will no longer be enrolled in the program at the end of this fiscal year. Obviously, this will mitigate policies relative to adults included in the Children's Health Insurance Program Reauthorization Act of 2007, which recently passed the Senate by a vote of 68-31 and which have come under criticism from this Administration.

We are also interested in further elaboration regarding the potential approval to expand eligibility beyond that which was contemplated by Congress. As you know, pursuant to Section 2102(b)(1) of the Social Security Act, a state plan, submitted for approval to the Secretary "shall include a description of the standards used to determine the eligibility of targeted low income children for child health assistance under the plan. Such standards may include (to the extent consistent with this title) those relating to...income and resources (including any standards relating to spenddowns and disposition of resources)."

You state in your letter that "the law gives states great flexibility to define income." However, it is clear that the intent of Congress was to limit income eligibility to children at or below 200% of the federal poverty level (FPL). The Conference Report accompanying the Balanced Budget Act of 1997 (Report 105-217), consistent with Section 2110 of Title XXI of the Social Security Act, "defines targeted low income children as those who (1) meet the eligibility standards as determined by the state, (2) reside in families with income below 200% of the federal poverty level or in states with Medicaid applicable income levels at, above, or less than 50 percentage points below 200% of poverty at the date of enactment, below the Medicaid applicable income level increased by no more than 50 percentage points."

If Congress had not intended the 200% FPL limit to be an actual limit on eligibility, then there would have been no need for Congress to explicitly provide for the possibility of SCHIP coverage of an additional 50 percentage points above certain state's Medicaid eligibility. Moreover, if Congress had not intended for the Secretary to have authority to disapprove state plan amendments expanding eligibility to any level, then the income limitations in the law and the 50 percentage point additional option for certain states would have been unnecessary.

Furthermore, approval of a state plan amendment (SPA) is not a foregone conclusion. There have been several state plan amendments that have been disapproved. The following is a description prepared by officials from the Centers for Medicare and Medicaid Services (CMS) of state plan amendments that have not been approved.

1. In March 8, 2004, Texas submitted a ninth amendment to transition the coverage of car seats from an outreach program under its administrative cap to a child health assistance benefit under its Secretary approved SCHIP benefit package. CMS disapproved the amendment on 12/15/04 with the rationale that car seats would be more appropriately characterized as a health services initiative funded under the administrative cap and not as child health assistance.

2. On September 28, 2005, Texas submitted its thirteenth amendment proposing to modify the cost sharing requirements for families with incomes from 133 percent through 150 percent of the federal poverty level (FPL) by replacing current monthly premiums with a \$25 enrollment fee every six months upon initial enrollment and re-enrollment. Because the \$25 enrollment fee exceeded the aggregate monthly amounts allowed by the SCHIP regulations for enrollees at or below 150 percent of the FPL, the SPA was disapproved on December 23, 2005.
3. On June 29, 2004, Virginia submitted a SPA to add some school-based services to the SCHIP State Plan. A request for additional information was sent to the State on August 18, 2004 and the 90-day review clock was stopped. The State never responded to the request for additional information and the SPA was disapproved on April 20, 2007. On June 22, 2007, the State requested a reconsideration of the disapproval. A hearing on the State's request is scheduled for September 4, 2007 in Philadelphia.

As you know, New York has recently submitted a state plan amendment (SPA) that would allow the state to expand eligibility for children under the State Children's Health Insurance Plan (SCHIP) up to 400% of the federal poverty level (FPL) (\$82,600 a year for a family of four). New York's Medicaid eligibility is currently 200% FPL (\$41,300 a year for a family of four) for infants, 133% FPL (\$27,464.50 a year for a family of four) for 1-5 year olds and 100% FPL (\$20,650 a year for a family of four) for 6-18 year olds. To raise eligibility 200 percentage points above the Medicaid eligibility limit for infants is in direct conflict with both the legislative language in Title XXI and the intent of Congress.

The Secretary has the authority to disapprove a state plan amendment that violates the requirements of the law or that is inconsistent with congressional intent, and therefore the Secretary has the authority to disapprove New York's SPA. First, the Secretary has the authority to make sure that State methodologies are consistent with the purpose of Section 2101, "to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured low income children." Second, a methodology that exceeds the plain meaning of "low-income" by proposing to implement excessive income disregards goes beyond Congressional intent and therefore should be disapproved.

We cannot determine an appropriate argument in support of this Administration's position that it is powerless to disapprove the New York SPA. Certainly, an argument that the current Administration is powerless to undo policies established by a prior Administration has no merit given this Administration's disregard of numerous policies established by the previous Administration. A few examples illustrate this point.

1. Regarding previous Administration policies relative to SCHIP: Timothy Westmoreland, Director, Health Care Financing Administration, under the Clinton Administration sent a letter to state health officials in July, 2000, providing guidance on Clinton Administration policies relative to parent and childless adult coverage under SCHIP. Outlined in this letter was the policy relating to section 1115 demonstration authority to give states the

ability to expand coverage to other populations, notably, parents of SCHIP eligible children and pregnant women. The policy of the Clinton Administration was that in order to secure these waivers, a state must be covering children up to age 19 with family incomes up to at least 200% FPL. In contrast, under this Administration, waivers have been approved to allow states that only cover children up to 185% FPL to cover parents and childless adults with SCHIP funds.

2. Additionally, it was established that the policy of the Clinton Administration relative to childless adults was to, "not consider demonstration proposals to cover other adults without children." Under this Administration, six states have received approval to cover childless adults.
3. Regarding previous Administration policies relative to intergovernmental transfers (IGTs): over the last 5 years, this Administration has systematically restructured financial relationships between the states and the federal government by changing the rules relating to intergovernmental transfers (IGTs). This Administration required states to restructure payments to providers through IGTs even though the IGTs were approved by the prior Administration and were arguably legal under existing law.

Given how aggressively the Administration acted and the broad range of regulatory authority this Administration assumed with IGTs, it is inconsistent to now claim to have "no authority to disapprove amendments solely based on income disregards" as in the case of the New York state plan amendment for SCHIP.

In light of the above, we would appreciate learning why this Administration would feel compelled to approve any state plan amendment, including the New York SPA in question, when the law and legislative history all support the argument that SCHIP is intended for lower income children. Further, we would appreciate knowing whether the Administration nevertheless intends to approve the New York plan, which would expand coverage to higher income children.

Thank you again for your support for SCHIP. We look forward to receiving your response.

Sincerely,

Charles E. Grassley
United States Senator
Ranking Member, Committee on Finance

Pat Roberts
United States Senator
Member, Committee on Finance

For Immediate Release

Wednesday, July 11, 2007

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Grassley, Hatch, Roberts urge Bush to protect children's health care dollars

WASHINGTON — Leading Republican members of the Senate Finance Committee today called on the President to stop the Department of Health and Human Services from granting and extending waivers for adult coverage under the State Children's Health Insurance Program.

In a letter, Sens. Chuck Grassley, Orrin Hatch and Pat Roberts said they were committed to returning the program to its focus on low-income children as they work on legislation to continue the program for another five years. They said the administration's approval and renewal of waivers has made it more expensive and more complicated to reauthorize SCHIP.

Grassley and Hatch have been working closely with the Finance Committee Chairman and the Chairman of the Subcommittee on Health Care to reach a bipartisan agreement on a reauthorization proposal. The Finance Committee is responsible for health care legislation and oversight of federal health care programs.

A number of states cover more adults through their SCHIP program than they do children, even while high rates of uninsured low-income children remain and the states ran out of money for the program. SCHIP is jointly financed by federal and state governments and is administered by the states.

"The mess created by the waivers makes it even more difficult to reauthorize SCHIP," Grassley said. "The waivers made program costs mushroom and led to funding shortfalls. Congress had to stopgap those shortfalls, and now Congress has to address the additional costs that come with all the adults that the administration approved for coverage under the children's health insurance program, as we work to get the program back on track and fulfilling its mission of delivering health care to low-income children."

"The purpose of CHIP is to help the children of the working poor, those whose parents make too much for Medicaid but too little to afford private insurance," Hatch said. "CHIP has been incredibly successful in delivering care to children for 10 years, and altering that model to allow waivers for adults undermines our ability to help these kids out."

"I strongly support returning the SCHIP program to its original focus: low-income children. We are signaling to the White House today that we want to make sure we are putting kids first. While we all agree with the need to address the issue of finding affordable health care

options for adults, we shouldn't be putting low-income kids at risk by using SCHIP as a vehicle to cover adults. Our focus should be providing health care coverage to those low-income children who still remain without health care coverage. Unfortunately, these waivers have threatened this priority, but it is our hope the administration will help us return SCHIP to its goal of covering low-income children," Roberts said.

The text of the letter sent from Grassley, Hatch and Roberts to President George W. Bush follows below, along with the text of a letter regarding the same matter from the three senators to Secretary of Health and Human Services Michael Leavitt.

July 11, 2007

The President
The White House
Washington, DC 20500

Dear Mr. President:

As Republicans, we are supportive of efforts to provide health insurance coverage to eligible low income children. As part of the reauthorization of the State Children's Health Insurance Program (SCHIP) we are committed to returning this program to its focus on low income children.

We are very concerned that the Department of Health and Human Services has approved and extended state waivers to cover adults. Simply put, adults should not have been added to a program for low-income children.

As you know, a number of these very states cover more adults through their SCHIP program than they do children. Yet, several of these states still have very high rates of uninsured low income children. Further, as these states covered adults in the SCHIP program, they ran short of funds. When this occurred, these states expected Congress to bail them out of funding shortfalls caused by funding that should not have been approved by HHS from the beginning.

The fact that the Department has approved these waivers in the past and has continued to extend them has complicated the reauthorization of the SCHIP program. Consequently, as part of reauthorization, Congress must address the adult populations added by the waivers.

We believe it is time to do all we can to return SCHIP to its original focus of covering low income children. Therefore, we respectfully request that you take steps to ensure that the Department refrains from granting or extending waivers for adult coverage under SCHIP.

We appreciate your prompt attention to this matter.

Sincerely,

Charles E. Grassley
United States Senator
Ranking Member of the Committee on Finance

Orrin G. Hatch
United States Senator
Ranking Member of the Finance Subcommittee on Health Care

Pat Roberts
United States Senator
Member of the Committee on Finance

CC: The Honorable Michael O. Leavitt, Secretary, Department of Health and Human Services

July 11, 2007

The Honorable Michael Leavitt
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Mr. Secretary:

Today we are sending a letter to the President regarding the approval of certain waivers for adults in the State Children's Health Insurance Program (SCHIP). As part of the reauthorization of the SCHIP, we are committed to returning this program to its focus on low income children. We are very concerned that the Department of Health and Human Services has approved and extended state waivers to cover adults. While we recognize that most of the waivers were approved before your tenure as secretary, simply put, adults should not have been added to a program for low-income children.

As you know, a number of these very states cover more adults through their SCHIP program than they do children. Yet, several of these states still have very high rates of uninsured low income children. Further, as these states covered adults in the SCHIP program, they ran short of funds. When this occurred, these states expected Congress to bail them out of funding shortfalls caused by funding that should not have been approved by HHS from the beginning.

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