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MEMORANDUM

TO: Reporters and Editors  
FR: Jill Kozeny, 202/224-1308  
for Sen. Grassley  
RE: CMS Interim Final Rule  
on Medicaid eligibility  
DA: March 20, 2007

Sen. Chuck Grassley, Ranking Member of the Committee on Finance, issued the comment below about action today by the Centers for Medicare and Medicaid Services to correct a problem that resulted from the agency's implementation of the Deficit Reduction Act of 2005. The interim rule issued by CMS made it more difficult for children born to undocumented mothers to gain Medicaid eligibility.

Sen. Grassley's comment:

“Current law says that a child born in the United States is a citizen, and the Deficit Reduction Act didn't change that law. So it's appropriate that the Centers for Medicare and Medicaid Services has reinstated its policy of deeming the child of a mother eligible for emergency Medicaid onto Medicaid. This is a positive step, and I look forward to watching CMS smoothly implement this rule.”

Earlier this month, Sen. Grassley introduced legislation to address the problems that have arisen during implementation of new procedures required by the Deficit Reduction Act. Here is a description of that bill and Sen. Grassley's floor statement.

For Immediate Releases  
Monday, March 5, 2007

Grassley works to make sure Medicaid law works for newborn babies

WASHINGTON – Sen. Chuck Grassley on Friday introduced legislation to fix glitches affecting the current law that guarantees children born in the United States are eligible for Medicaid.

The senator said there are reports that the implementation of new procedures required by the Deficit Reduction Act has adversely and erroneously inhibited access by some eligible newborn children to Medicaid. The new procedures were aimed preventing ineligible adults from accessing Medicaid.

As Chairman of the Committee on Finance, Grassley was the principal author of the Senate Medicaid reform provisions included in the Deficit Reduction Act of 2005. Medicaid is a program sponsored by the federal government and administered by states to provide health care and health-related services to low-income individuals, including children under age six.

The text of Grassley's floor statement describing the legislation introduced last week – the Guaranteed Access to Medicaid for Newborns Act – follows here.

Floor Statement by Sen. Chuck Grassley of Iowa  
Ranking Member of the Committee on Finance  
Introduction of the Guaranteed Access to Medicaid for Newborns Act  
Friday, March 2, 2007

Mr. President, I am pleased today to introduce the Guaranteed Access to Medicaid for Newborns Act. This bill corrects a problem that has arisen during the implementation of the Deficit Reduction Act (DRA) of 2005. Through this act, we will guarantee that children born in America who are eligible for Medicaid can seamlessly get Medicaid coverage.

For the last two decades, Medicaid recipients have been required to be a U.S. citizen or qualified alien who has been in the country for at least five years. In a July 2005 report, the HHS Office of Inspector General found that 47 states allowed individuals to 'self-attest' their citizenship status to qualify for Medicaid benefits. In short, the state simply asked a Medicaid applicant if they were a citizen. The applicant need only respond, "Yes, I am an American." No documents necessary. And of those 47 states, 27 did no follow up verification such as checking with the Social Security Administration. In response to this report, the DRA included a House-led provision that I supported to require states to more carefully document the citizenship of Medicaid recipients and applicants.

Implementation of this provision, as is often the case with legislation, has not been without its challenges. The interim final rule that was issued by CMS effective July 6, 2006 did make many improvements so that the new statute could be implemented consistent with legislative intent. I think, on the whole, CMS did a good job. However, there was one specific provision in the interim final rule that I do not think is consistent with Congressional intent: the provision that makes it more difficult for children born to undocumented mothers to gain Medicaid eligibility.

In Section 1903(v) of the Social Security Act, the Medicaid statute makes available payment to states for treatment of an alien who is not otherwise eligible for Medicaid in the case of an emergency medical condition. A woman who is undocumented or not otherwise eligible for Medicaid is covered under Medicaid for labor and delivery. Nothing in the DRA changed

that nor was anything in the DRA intended to change that.

Under Section 1902(e)(4) of the Social Security Act, a child born to a woman receiving Medicaid at the time of the child's birth is deemed onto Medicaid for a year. States had been interpreting that to mean the child of a woman who was undocumented could be deemed onto Medicaid for a year since the mother, under 1903(v), was eligible for Medicaid at the time of the child's birth. The interim final rule now specifically prevents a state from deeming the child of an undocumented mother onto the state Medicaid program without properly documenting the child's citizenship first.

In this case, I believe CMS has gone too far. A child born in the United States of America is a citizen. Before the DRA, children born to mothers on Medicaid were deemed onto Medicaid, and I think that is absolutely in the best interest of that newborn child. The DRA did not change two fundamental facts: first, the mother, regardless of documentation status, was eligible for Medicaid at the time of the child's birth and, second, the child is a citizen. In my mind, there is no reason then to have any new documentation requirement for the child.

The legislation I am introducing today reinstates the pre-DRA policy with one notable exception. Under the old rule, a state could issue a temporary Medicaid identification number to the mother which served as the identification number for the child for up to a year. I don't think that it's necessary or appropriate for a state to provide a child Medicaid benefits by issuing the mother a Medicaid card. This is especially problematic in cases where the mother may not be in the country legally nor eligible for Medicaid after delivery. My legislation changes the old policy by requiring the state to issue an identification number to the child of the undocumented mother. This does not in any way change the states' responsibility to provide the mother benefits when she comes to the emergency room in labor.

The legislation makes one further change to the statute to benefit newborns. Under the interim final rule, all children born to mothers on Medicaid are required to document their citizenship within one year of birth. I do not think that is necessary. Medicaid paid for the birth of an American citizen. It is simple common sense that the child is a citizen and requiring any further documentation is redundant and counter-intuitive.

I want to be clear that I support the requirement that a state more fully document the citizenship of applicants for Medicaid. Given what the Congressional Budget Office has told us would be the cost of making undocumented aliens eligible for public programs, the Deficit Reduction Act addressed a real concern by requiring documentation. I want the new statutory provision to go forward to ensure that the people getting the benefits are actually eligible for the benefits. However, CMS and the states should recognize what is to me, common sense: a child born in the United States whose birth was paid for by Medicaid is a citizen under current law. No further documentation necessary.