

Congress of the United States
Washington, DC 20515

January 14, 2008

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 are writing to express our very serious concerns about the strategy your Department is pursuing with regard to children's health care coverage through Medicaid and the State Children's Health Insurance Program (CHIP). Recent actions by the Centers for Medicare & Medicaid Services (CMS) regarding several states – including Ohio, Louisiana, New York, Wisconsin and Oklahoma – are just the latest in a growing list of unilateral changes to longstanding law and policy without statutory authority. This administration's actions deny healthcare to the uninsured children of working families who are lawfully entitled to care at a time when economic pressures on families are high. We strongly urge you to immediately reverse this course of action.

As Members of Congress who are intimately familiar with the "original objectives" of CHIP, we are profoundly troubled by recent administrative efforts to limit the broad flexibility afforded states under the original CHIP statute and to limit longstanding flexibility under Medicaid. Despite repeated warnings about the legality of the August 17, 2007, directive and the absence of a formal rulemaking process, your administration has continued to pursue a policy that is contrary to federal law and that limits children's access to healthcare. Federal law does not authorize CMS to effectively impose an income eligibility cap in CHIP or Medicaid, nor does it require states wanting to cover children at levels higher than 250 percent of poverty (or \$43,000 a year for a family of three) to have to use 100 percent state-only funds to do so.

Nearly 9 million children in this country lack health insurance. These children aren't uninsured because their families are turning down affordable, comprehensive private coverage. These children are uninsured because private coverage is either not offered at all or otherwise inaccessible. The August 17 directive prohibits states from covering more uninsured children on the *theory* that millions of children eligible for CHIP have access to private coverage that their families can afford and that meets their needs. The *practical effect* of this misguided perspective is that millions of children will continue to be uninsured. The states that have decided to extend coverage to additional low-income children have determined that these children indeed need that coverage and have put their state funds on the line to that end. CHIP and Medicaid are designed to assure that the federal government would be a partner in such efforts to provide health care coverage to children, but CMS's actions have unilaterally abrogated that partnership.

We are particularly disturbed by recent attempts to limit the Medicaid guarantee of health coverage by applying the August 17 directive and existing CHIP law to children in Medicaid expansion states. When CHIP was created in 1997, nearly 10 million children were uninsured, and the enhanced matching rate was intended to be an incentive for states to cover more children. However, nothing in the CHIP statute affects underlying Medicaid eligibility or states' ability to expand coverage to children using Medicaid funds. In fact, states that elect to structure their CHIP programs as Medicaid eligibility expansions for children must follow all Medicaid rules. The Medicaid statute does not prescribe an income eligibility limit, nor does the existence of the CHIP program eliminate the ability of states to use Medicaid as a way to provide coverage for children. CHIP was created to expand, not restrict, states' ability to cover children.

The December 20, 2007, denial of Ohio's state plan amendment (SPA) to expand coverage to uninsured children through the Medicaid program on the grounds that "the state will claim Federal matching funds at a rate other than the rate set forth in the Social Security Act..." is substantiated neither by federal law nor the state's request. Ohio proposed to cover new children under Medicaid who have not been determined by the state to be eligible for CHIP. As such, Ohio was clearly within its rights to request regular FMAP under Medicaid for that expansion population of children. We, therefore, strongly urge you to reverse CMS's decision.

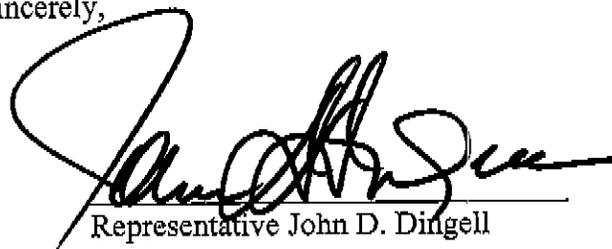
The President has made repeated statements about his desire to cover more uninsured children. However, the actions of your Department contradict those statements. Moreover, the Department's actions are inconsistent with federal law. Instead of supporting state efforts, this administration is punishing states for trying to reduce the number of uninsured children. Unfortunately, the net effect of these Medicaid and CHIP policies is that fewer children will have access to comprehensive healthcare coverage, including fewer children in families earning below \$35,000 a year. You can and should reverse this serious course of action immediately.

We appreciate your prompt attention to this important matter and request a response no later than January 31, 2008.

Sincerely,



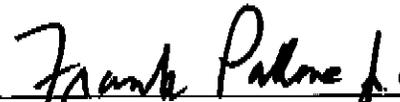
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Chairman
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