



NATIONAL CONFERENCE *of* STATE LEGISLATURES

*The Forum for America's Ideas*

TESTIMONY OF

ASSEMBLYMAN HERB CONAWAY, JR  
NEW JERSEY STATE ASSEMBLY

ON BEHALF OF THE

NATIONAL CONFERENCE OF STATE LEGISLATURES

REGARDING

**H.R. 5613, PROTECTING THE MEDICAID SAFETY NET ACT OF 2008**

BEFORE THE

SUBCOMMITTEE ON HEALTH  
COMMITTEE ON ENERGY AND COMMERCE  
UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 3, 2008

Chairman Pallone and Distinguished Members of the Subcommittee:

I am Herb Conaway, Jr., a member of the New Jersey State Assembly and chair of its Health and Senior Services Committee. Today I am testifying on behalf of the National Conference of State Legislatures (NCSL) where I serve this year as chair of the NCSL Standing Committee on Health. NCSL is the bi-partisan organization representing the 50 state legislatures and the legislatures of our nation's commonwealths, territories, possessions and the District of Columbia.

While I hope one day to appear before you to discuss ways to expand coverage; to improve the quality of benefits and services to Medicaid beneficiaries and to share best practices to provide state-of-the-art care to our most vulnerable citizens, today I appear before you to express NCSL's support for H.R. 5613, Protecting the Medicaid Safety Net Act of 2008, a bill that proposes to delay until March 2009 the implementation of seven pending Medicaid rules. NCSL strongly supported the moratoriums enacted by Congress last year. This year our sense of urgency has increased as the economy continues to decline and many states, New Jersey among them, face unprecedented budget shortfalls. The impact of these rules going into effect and sucking billions of dollars out of the Medicaid program would strike a devastating blow to the Medicaid program, Medicaid beneficiaries and our network of safety-net providers.

NCSL continues to be concerned about the "regulatory activism" being exercised by the U.S. Department of Health and Human Services, particularly the activities of the Centers

for Medicare and Medicaid Services (CMS). By regulatory activism we mean moving a regulatory agenda and promulgating regulations that: (1) are not supported by legislative activity; (2) are not imposed due to direction by Congress; or (3) exceed the authority provided in legislation. Over the past several months, significant changes in Medicaid law and policy have been put forth through regulation, letter, and other administrative activities. Some of the rules were first put forward as legislative proposals that Congress failed to embrace. While these provisions failed as legislation, they sit before us today as rules ready to be implemented unless legislation is enacted to stop them.

It is important to note that while this legislation would delay the implementation of seven rules, there is at least one more rule and a letter to State Health Officials that is also of concern to states. In fact, my state and others have filed suit to stop the implementation of some of the provisions of the August 17<sup>th</sup> letter to State Health Officials that essentially changes the income eligibility standards for the State Children's Health Insurance Program (SCHIP) and Medicaid without a flick of the legislative pencil. The other regulation would give the Secretary of the U.S. Department of Health and Human Services broad authority to overturn decisions of the Departmental Appeals Board. A very problematic proposal.

Regulatory activism as exercised by CMS effectively transfers legislative powers to the executive branch and compromises the process by which states and other stakeholders provide input, fundamentally changing the legislative process. This should be stopped.

While NCSL strongly supports H.R. 5613 and urges its adoption, we recognize that it is a short term solution. Unless action is taken to address these rules in a more permanent fashion, next year at this time we will be back asking for more delays. We cannot continue to seek delays and to spend limited state resources to fight these rules in the courts. Medicaid and the individuals who depend on it for their health care coverage deserve better.

States need: (1) stability in Medicaid policy and financing; (2) uniform rules and application of the rules; and (3) transparency in the policymaking process. We must find ways to: (1) maintain state flexibility; (2) allow states to raise matching funds using local government funds as provided in current law; (3) provide coordinated care to vulnerable populations in a cost-effective manner that allows the various state agencies that serve those individuals to work together; (4) provide some Medicaid administrative services in schools, using trusted school employees and/or contractors who can receive Medicaid reimbursement; (5) define rehabilitative services in a way that will not disenfranchise hundreds of Medicaid beneficiaries currently receiving those services; (6) establish a hold-harmless test for Medicaid provider taxes and donations that is more objective than those proposed in the rule; and (7) maintain Medicaid reimbursement for Graduate Medical Education to provide continued support for our primary care physician workforce. We must make the state-federal partnership work.

Finally, unless the economy vastly improves over the next several months, states can anticipate a surge in Medicaid enrollment that will be extremely difficult to support.

With this in mind, we urge you to study options to include a provision establishing emergency assistance to states within the Medicaid statute. The provision would upon some triggering event, such as an economic downturn, natural disaster, act of terrorism, pandemic or other public health emergency, provide additional financial assistance to states through an enhanced federal match or some other mechanism that would revert back to the regular federal-state cost-sharing formula when the triggering event has been resolved. This is a complex, but critical component to fiscal security for the Medicaid program. NCSL added this "Emergency Assistance" provision to its Medicaid policy as the result of the work and recommendations of its NCSL Task Force on Medicaid Reform. NCSL looks forward to working with Congress and the Administration to identify options and to establish and implement an emergency assistance program.

I thank you for this opportunity to share our perspectives with you and look forward to answering any questions you may have.