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Hatch: Independent CRS Report Confirms HHS Has Authority to Waive Burdensome Medicaid Requirements in New Health Law

Calls on Secretary Kathleen Sebelius During Committee Hearing to Heed to the Calls of Governors and Do Away With Unreasonable Regulations

WASHINGTON –U.S. Senator Orrin Hatch (R-Utah), Ranking Member of the Senate Finance Committee, today called on Health and Human Services Secretary Kathleen Sebelius to heed to the calls of Governors representing cash-strapped states and waive the onerous maintenance-of-effort (MOE) restrictions that were included in the stimulus and in the new health law.

“The Medicaid mandates included in ObamaCare are crippling state budgets, encroaching on their flexibility to lower Medicaid spending, and tying states hands in targeting scarce resources to the most vulnerable beneficiaries,” said Hatch, who has led the charge against the unreasonable MOE restrictions and the expansion of Medicaid in the new health law. “Despite repeated calls from our Governors to waive such burdensome regulations, Secretary Sebelius has turned a blind eye to the fiscal fiasco the maintenance of effort requirements have generated. An independent CRS Report now confirms that the Secretary does, indeed, have the authority to do away with the requirements and it is incumbent upon the Department of Health and Human Services to act now and heed to the Governors call for help.”

The \$2.6 trillion health law included maintenance-of-effort restrictions on states that forces them to maintain expanded eligibility requirements. Given the states’ \$175 billion collective budget crisis, a majority of Governors have requested relief from the maintenance-of-effort restrictions. These regulations have hampered state efforts to balance their budgets and forced them to make cuts to education, law enforcement, and other state priorities. Secretary Sebelius has repeatedly said she does not have the authority to authorize the waivers.

Despite such claims, during a hearing with Secretary Sebelius examining ObamaCare today, Senator Hatch cited an independent Congressional Research Services (CRS) report that confirmed the Secretary has the authority, if she chooses to use it, to waive such burdensome regulations.

Specifically, the report found:

- “States may apply for waivers under various provisions of the Social Security Act, including... the demonstration project waiver under Section 1115 of the Social Security Act (‘section 1115’).
- Section 1115, the subject of this analysis, allows the Secretary to waive the requirements of specific sections of the Social Security Act, including section 1902, for any ‘experimental, pilot or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of title... XIX of this chapter... in a state or states.’

- The Secretary may waive the specified provisions ‘to the extent and for the period he finds necessary to enable such State or States to carry out such project.’
- The Secretary’s discretion to approve demonstration projects under Section 1115 is broad, and the courts have been reluctant to circumscribe the Secretary’s authority under this provision.
- • Congress placed the PPACA MOE requirements, described above, in section 1902(a) of the Social Security Act. The Secretary has the authority, when she chooses to grant a section 1115 demonstration project waiver to a state, to waive compliance with the provisions of section 1902... In either case, it is likely that the courts would accord considerable deference to the Secretary’s interpretation of the provisions in question, and uphold the Secretary’s determination as ‘a reasonable interpretation made by the administrator of an agency.’”

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