

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DON GAETZ

President
1st District

June 28, 2013

The Honorable Gus M. Bilirakis
United States House of Representatives
2313 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Bilirakis:

The Florida Legislature recently concluded its 2013 session without authorizing an expansion of Medicaid pursuant to the Patient Protection and Affordable Care Act (PPACA). The issue was thoughtfully evaluated and thoroughly debated. Select committees, appointed in both the Senate and the House to address numerous PPACA issues, met for many hours and heard from policy experts, affected parties, and members of the public. The Senate chose not to authorize an expansion of the current Medicaid program, but offered a proposal for creating an alternative benchmark plan using private insurers, cost-sharing, and incentives for healthy behaviors. A state-funded program was proposed by the House of Representatives.

The Senate bill used the full extent of the flexibility available under current law and this administration's interpretation of current law. However, the restrictions and requirements associated with Medicaid remain onerous and account, at least in part, for the unwillingness of so many states to accept what otherwise would be a very attractive financial offer. It is time to recalibrate the balance of authority shared by the federal government and the states for administration of Medicaid and the expansion program.

Three key areas—all within the purview of the Department of Health and Human Services (DHHS)—should be starting points for meaningful improvements. First, PPACA's enhanced match for expanded eligibility should be extended to partial expansions. Second, the strict limits on cost-sharing by Medicaid enrollees should be revised to allow states to respond to diverse circumstances in the expansion population. Third, the numerous bureaucratic barriers that impede states' efforts to vary coverage and innovate with new service delivery models should be eased. We believe these three areas should be considered differently than these same topics in the current Medicaid program. DHHS should use the flexibility inherent in the Supreme Court's definition of the PPACA-authorized expansion as a "new program". As noted

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DON GAETZ
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June 28, 2013

Page 2

by the Congressional Research Service, the Secretary has the authority to resolve the practical ramifications of the ruling based on her authority to interpret the Act and the responsibility to do so while taking the Supreme Court's decision into account.

A ready example of DHHS interpreting PPACA with such flexibility is found in the determination that states may choose at any time to opt into or out of expansion. PPACA, enacted within the context of a mandate, only gave states an ultimatum and a single deadline. The Department's adjustment of this provision makes sense in light of the Supreme Court decision and we appreciate it. Perhaps the Secretary was influenced in this matter by the potential for greater participation when the option remains open to the states versus the possible results under a sudden-death decision by January 1, 2014. We encourage you to contact Secretary Sebelius to encourage her to support states that may want to take a more cautious and gradual approach to expansion, rather than insist on a one-step, full expansion to all persons under 138% of poverty.

In regard to cost sharing, we again suggest that you urge the Secretary to adopt the Supreme Court's perspective of expansion as a new program in order to create greater flexibility for states and more continuity of costs for the newly eligible. There is empirical evidence that the expansion population is different from the current Medicaid enrollees. Most are able-bodied and many are employed. Additionally, many will experience fluctuations of income that churn between Medicaid eligibility and the subsidized coverage in the exchange. States should be able to promote personal responsibility and require a rational amount financial participation that avoids creating disincentives for work. Current Medicaid permits only nominal cost sharing by participants and no premium costs. Extending these same limits to the expansion population means they will experience unanticipated obligations upon moving to the subsidized plans in the exchange when their income increases and they are required to pay up to 2 percent of the premium as well as other out-of-pocket costs, even if those amounts are reduced compared to the non-subsidized population.

Finally, we ask you to support streamlining of the programmatic review process that limits and delays innovation. In the current program, these processes drag on for months or even years without resolution or are resolved only with a final permission slip that waters down bold initiatives. The Secretary has broad authority to make the reviews more timely and less subjective. The Department's focus should shift toward monitoring and measuring outputs and outcomes rather than imposing the minutiae of obscure regulations built up over the last four decades. In the recent approval of Florida's statewide managed care waiver, the Department took approximately two years before delivering 62 pages and more than 118 terms and conditions. While Congress ultimately should authorize more flexibility for states, even now the Secretary can allow the new program authorized by the Supreme Court to function more like a block grant or a shared risk initiative. This approach would offer quick approval and significant flexibility, but hold states accountable for achieving specific objectives, such as increases in covered lives or improved health status.

June 28, 2013
Page 3

It would be wrong to conclude that the lack of an expansion decision during the 2013 legislative session means that Florida does not recognize unmet health care needs in this state or lacks a commitment to improvement. The debate over how to improve access to affordable care was serious and vigorous. We expect the debate to continue. Before we begin the next round of these deliberations, we need your help. We ask you to contribute to our ability to find an affordable and sustainable method to provide access to quality health care for all Floridians by authorizing greater flexibility and urging the Secretary to create true partnerships between states and the federal government.

Thank you for your consideration of these issues.

Respectfully,

A handwritten signature in blue ink, appearing to read "Don Gaetz", with a stylized flourish at the end.

Don Gaetz
President of the Florida Senate