

CHRISTINE O. GREGOIRE
Governor



STATE OF WASHINGTON
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April 22, 2008

The Honorable Michael Leavitt
Secretary, Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Mr. Secretary:

Washington State leads the nation in providing a solid foundation to ensure that all of our children have access to high quality, affordable health care by 2010. To do so makes sense not only from a fiscal standpoint, insofar as children who have access to routine, preventative services are kept out of emergency rooms, but also answers a moral imperative to do what we can to keep every child healthy. In my state, we are making great strides in reaching our 2010 goal, however, it is critical that the federal government is a partner in our efforts. As such, I ask that you rescind the Department of Health and Human Services (HHS) August 17, 2007, directive to states concerning the State Children's Health Insurance Program (SCHIP) that only serves as a barrier. This is necessitated by the new information released on Friday, April 18, 2008, about the directive.

As you are aware, the August 17 directive sent to states through the Centers for Medicare and Medicaid Services (CMS), requires: (1) states to cover 95-percent of children below 200% of the Federal Poverty Level (FPL) prior to moving eligibility levels above 250% FPL; and (2) a child previously covered through employer sponsored coverage to remain uninsured for one full year before being eligible for SCHIP. Soon after the directive was sent, a bipartisan group of 30 governors sent a letter to you asking you to rescind it. On October 4, 2007, Washington State, together with several other states, filed a lawsuit seeking injunctive relief from the directive based largely on HHS exceeding its authority in promulgating the directive. The lawsuit is still pending.

On Friday, April 18, two non-partisan federal agencies – the U.S. Government Accountability Office (GAO) and the Congressional Research Service (CRS) – issued two separate legal opinions that substantiate the earlier actions by states and come to the same conclusion: HHS exceeded its authority under the Congressional Review Act in issuing the directive to states.



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Passed in 1996 as part of the Congress' *Contract With America*, the Congressional Review Act (CRA) is intended to keep Congress informed of federal agencies' rulemaking activities and requires that before any rule take effect, agencies – including HHS – must first submit the rule to Congress and the Comptroller General. According to GAO, “[t]he August 17 letter from CMS to state health officials is a statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy with regard to [SCHIP]. Accordingly, it is a rule under the Congressional Review Act”....and “...before it can take effect, it must be submitted to Congress and the Comptroller General.”

Rather than keep the several states and federal government tied up in litigation over the August 17 directive – litigation that decidedly favors the states – I ask that you save taxpayers this expense and immediately rescind the directive.

Sincerely,



Christine O. Gregoire
Governor

cc: Washington State Delegation