



June 23, 2015

The Honorable Fred Upton
Chairman, Committee on Energy and
Commerce
United States House of Representatives
2183 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton:

We the undersigned Attorneys General write to express our concern regarding the coercive efforts of the United States Health and Human Services, Center for Medicare and Medicaid Services (“CMS”) to expand Medicaid by withholding unrelated health care funding on critical state programs. The United States Supreme Court has made clear that the federal government cannot compel states to administer federal programs and CMS’ recent decisions to deny unrelated federal health care funding based on a state’s non-expansion of Medicaid constitutes unlawful coercion.

Section 1115 of the Social Security Act, 42 U.S.C. §1315, authorizes state and federal partnerships to provide funding for healthcare providers offering services to underserved populations that would not otherwise be covered under Medicaid. At least twenty-two states have implemented Section 1115 programs in their states with CMS providing matching federal funding to offset costs for health care providers caring for uninsured, underinsured and other at-risk populations.

Florida’s Low Income Pool (“LIP”) is one example of a Section 1115 program, for which the federal government has provided substantial funding since 2005. Under Florida’s LIP program, federal funding has been used to (1) Offset health care services for immigrants ineligible for reimbursement under Medicaid; (2) Support state and private medical schools and their teaching hospitals with slower patient turnover rates inherent

with the education of medical students; and (3) Support children's hospitals, which in Florida receive \$125 million annually under the LIP. At least 5 states, including Arizona, California, Kansas, Tennessee, and Texas have programs substantially similar to Florida's LIP.

On April 15, 2015, after extensive negotiations regarding the continuance of funding of Florida's LIP, CMS informed Florida that it would no longer provide the over \$1 billion in annual funding to support LIP unless and until Florida expanded its Medicaid coverage. CMS reached this conclusion even though Florida had repeatedly made clear that its LIP covers services separate and distinct from services that would otherwise be covered under an expanded Medicaid program.

Kansas, Tennessee, and Texas face similar threats regarding their uncompensated care pools and are experiencing increasing pressure from CMS to expand Medicaid in exchange for continued funding under Section 1115. And the stakes are high. If CMS does not approve funding Texas' LIP program, which expires in 2015, Texas stands to lose billions overtime in federal funding for hospitals.

We acknowledge that CMS has discretion under Section 1115 to approve programs. But CMS cannot make its determination based on a state's opting-out of Medicaid expansion. Because CMS has repeatedly linked Florida's non-expansion of Medicaid under the ACA to the non-renewal of funding for Florida's LIP, CMS' actions are unconstitutionally coercive.

In a hard-fought victory before the United States Supreme Court, the States successfully argued "the basic principle that the 'Federal Government may not compel the States to enact or administer a federal regulatory program.'" *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2601 (2012). While "Congress may use its spending power to create incentives for States to act in accordance with federal policies... when 'pressure turns into compulsion,'... the legislation runs contrary to our system of federalism..." *Id.* At 2602. When, as here, CMS' hardline on state Medicaid expansion "take[s] the form of threats to terminate other significant independent grants, the conditions are properly viewed as a means of pressuring the States to accept policy changes." *Id.* at 2604.

On April 28, 2015, Florida Governor Rick Scott and Attorney General Pam Bondi sued CMS for unlawful coercive expansion of the state's Medicaid program. While CMS' unlawful action will play out in the Court system, we welcome assistance from Congress in reigning-in CMS, an agency insistent upon trampling the rights of our sovereign states to make critical policy decisions regarding Medicaid and, in terminating funding for critical health services, imperiling the lives of our most vulnerable citizens.

We appreciate the Committees investigation on this most critical matter.

Sincerely,



Ken Paxton
Attorney General of Texas



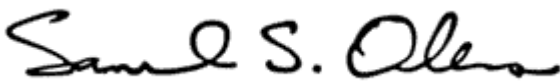
Derek Schmidt
Attorney General of Kansas



Luther Strange
Attorney General of Alabama



Pamela Jo Bondi
Attorney General of Florida



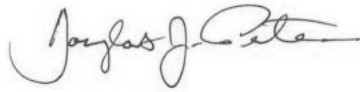
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Douglas Peterson
Attorney General of Nebraska



Alan Wilson
Attorney General of South Carolina



Sean Reyes
Attorney General of Utah

Copy: The Honorable John Boehner, Speaker, United States House of Representatives
The Honorable Nancy Pelosi, Minority Leader, United States House of Representatives
The Honorable Mitch McConnell, Majority Leader, United States Senate
The Honorable Harry Reid, Minority Leader, United States Senate