



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DON GAETZ

President
1st District

April 17, 2014

Sylvia Burwell, Secretary-Designate
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary-Designate Burwell:

To date, the Florida Legislature has not authorized an expansion of Medicaid pursuant to the Patient Protection and Affordable Care Act (PPACA). The issue was thoughtfully evaluated and thoroughly debated in 2013 with select committees in both the Senate and the House meeting for many hours to hear from policy experts, affected parties, and members of the public. During that session, 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 the department's current interpretations of 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. Your nomination to replace outgoing Secretary Sebelius offers an opportunity 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 your purview—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. Likewise, acceptance of some personal responsibility for health decisions should be permitted. 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. In your new role, you will be able to use the flexibility inherent in the Supreme Court's definition of the

REPLY TO:

- 409 The Capitol, 404 South Monroe Street, Tallahassee, FL 32399-1100 (850) 487-5229
- 4300 Legendary Drive, Suite 230, Destin, FL 32541 (850) 897-5747 FAX: (888) 263-2259
- 212 Senate Office Building, 404 South Monroe Street, Tallahassee, FL 32399-1100 (850) 487-5001
- 5230 West U.S. Highway 98, Administration Building, 2nd Floor, Panama City, FL 32401 (850) 747-5856

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

PPACA-authorized expansion as a “new program”. As noted by the Congressional Research Service, the secretary has the authority to interpret the Act and resolve the practical ramifications of the ruling while taking the Supreme Court’s decision into account.

Prior examples of the department exercising flexibility in the interpretation of PPACA abound. One such example is 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. Secretary Sebelius adjusted this provision in light of the Supreme Court decision. We appreciate and support that decision. It is possible that with even greater flexibility, you may encourage participation among states that prefer a more cautious and gradual approach to expansion.

In regard to cost sharing, we again suggest that you 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 streamline 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. As secretary, you will have broad authority to make the reviews timelier and less subjective. We urge you to shift your focus toward monitoring and measuring outputs and outcomes rather than the minutiae of obscure regulations built up over the last four decades. To do this, you should allow the new program authorized by the Supreme Court to function more like a block grant or a shared risk initiative for which you offer quick approval and significant flexibility, but hold states accountable for achieving specific objectives, such as increases in covered lives or improved health status.

It would be wrong to conclude that the lack of an expansion decision to date 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 is serious, vigorous, and ongoing, but 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

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authorizing greater flexibility and creating 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

Cc: The Honorable Bill Nelson
The Honorable Rick Scott
The Honorable Will Weatherford
Florida Congressional Delegation