

THE WHITE HOUSE

WASHINGTON

February 11, 2000

Health Care -
Medicaid -
Arkansas

MEMORANDUM

TO: John Podesta
FROM: Chris Jennings and Bruce Reed
RE: Arkansas Medicaid Issue
cc: Mickey Ibarra, Karen Tramontano, Bruce Lindsey

As you may recall, we have been reviewing a controversial issue in Arkansas's Medicaid program. The state has been giving poor parents whose children are eligible for Medicaid the option of enrolling them in the ARKids waiver program, which is targeted to higher income children and has higher cost sharing and fewer benefits than Medicaid. HCFA sent a letter to the state in October stating that this practice was not permissible - which set off a firestorm of calls from state advocates, officials and the Governor.

In response, we agreed to review the initial HCFA interpretation in the context of improvements that the Governor committed to implementing to remove barriers to enrolling in Medicaid (which make a fair choice between programs now impossible). HHS recently concluded that, while it has the discretion to allow this practice, it does not believe that it is advisable on policy grounds. In short, they believe that: (1) even if it were possible to eliminate the bias against Medicaid, no family would rationally choose ARKids so why bother; and (2) approving "choice" in Arkansas will make it extremely difficult to refuse additional states' requests and would inevitably lead to a blurred line between Medicaid and CHIP, undermining the Medicaid entitlement.

We let the President know about the HHS decision in a recent weekly report. In the margins, he wrote, "we need to discuss this; this looks like enough to me," referring to the actions that the state has taken to eliminate barriers to Medicaid enrollment. In light of the President's initial response to this situation, but also taking into account the major controversy that will result regardless of the decision that we make, we believe that we need to be sure he is comfortable with any action on this issue. We would like to meet with you about this to discuss how to reach resolution and develop a roll-out strategy.

BACKGROUND

ARKids First is a Medicaid waiver program approved in 1997 that provides health insurance coverage to children between 100 and 200 percent of the poverty level. The waiver gives the state significant flexibility in the provision of cost-sharing and benefits; in fact, ARKids First is charging higher copayments than is allowed even under the new, extremely flexible CHIP program. And, like CHIP, it limits the EPSDT benefit in Medicaid and over other 15 services provided by the traditional Medicaid program.

Last spring, we learned that the state is giving families the option of enrolling their children in ARKids when they are actually below poverty and eligible for Medicaid. State officials – and some advocates – argue that this helps overcome the Medicaid stigma. If not given the option of enrolling in ARKids, some parents wouldn't enroll their children at all because they do not want them in a Medicaid "welfare" program. However, all parties involved acknowledge that, given the different applications, enrollment processes and marketing practices in Arkansas, families may not be presented with a fair choice. For instance, while parents have to go to welfare offices to sign their children up for Medicaid, they can use a mail-in application for ARKids.] why?

In October, HCFA wrote a letter to state officials informing them that it did not view this practice as permissible under the terms of the waiver and told the state to end it. Governor Huckabee immediately responded in a press conference and, the next week, in a Republican response to the President's radio address. He claimed that the President was denying Arkansas's families' "freedom of choice" and that this would cause "thousands of our state's children" to lose their coverage since their parents' pride would prevent them from enrolling them in this "welfare" program. The President wrote a letter to the Governor, informing him that we would look into this matter.

In November, Arkansas officials submitted a proposal to HCFA, stating that it would: (1) use one application for both programs; (2) allow mail-in applications for Medicaid; (3) rename Medicaid to include "ARKids" so the outreach activities for this new program would carry over to Medicaid; and (4) simplify – but not eliminate – the assets test. All involved agree that these are important improvements, but the biggest single barrier to enrollment is the assets test which would not be removed.

HHS'S POSITION

HHS has reviewed Medicaid and CHIP law and policy and concluded that: (1) it is a policy and not legal choice to approve the ARKids waiver; and (2) we should not approve it. When HHS approved the ARKids waiver in the first place, a great number of people in the advocacy community (Families USA, Children's Defense Funds, Center for Budget and Policy Priorities, etc.) felt that it sets a bad precedent and puts poor children unnecessarily at risk. Their concerns were reflected in the final compromise on the CHIP legislation included in the BBA 1997. The new statute requires that states cover Medicaid-eligible children under Medicaid and prohibits them from enrolling them in CHIP. The Congress reached this agreement for three major reasons. First, there was concern that states would game the CHIP program to get the higher CHIP matching rate. Second, children's advocates were very concerned that poor children could lose access to Medicaid's more comprehensive benefit package. And third, the same advocates thought that the CHIP block grant would creep into and undermine the Medicaid entitlement. As such, this is probably the most important provision to advocates and Congressional Democrats. They are all watching this situation closely and a decision in favor of the state would not only set off loud criticism but could jeopardize Democratic support for our other Medicaid / CHIP initiatives – since they will fear that we are on a slippery slope to eliminating Medicaid's guarantee to health services.

STATE'S POSITION

The arguments made by the state and advocates are also compelling. Notwithstanding the strong opposition from national children's advocacy groups, consumer advocates and providers in Arkansas seem to be quite pleased with the program. About 50,000 children have been enrolled. Its outreach program is a national model, and Arkansas is one of the few states whose number of uninsured dropped significantly last year. Amy Rossi, a children's advocate and friend of the President, believes that it has been an extremely successful program and validates the Governor's contention that there are parents who would choose no insurance over Medicaid if that were the only option. In fact, she believes that up to 30 percent of the Medicaid-eligible ARKids population would refuse to enroll their children in Medicaid.

Moreover, the Congressional Republicans as well as the NGA have made this a cause celebre -- yet another example of the Republican party's support for choice and personal responsibility. They will argue that President's own home state has been forced to patronize families by not giving them the choice to responsibly pay low copayments for their children's health care. We anticipate that this "choice" issue will be a central health policy resolution at the upcoming NGA meeting. It is even possible that our denial will result in legislation to override it and play a role in the election.

OPTIONS AND TIMING

The only option short of a denial is to see if we can work with the state on a constrained demonstration / pilot project. A pre-condition to discussing the demonstration would be eliminating the assets test. As a reminder, one of our budget policies is to require states that have eliminated this test in CHIP to do so in Medicaid. We would also have to construct a set of data monitoring and evaluation requirements to distinguish this from a run-of-the-mill Medicaid waiver. That said, it is not clear that either side would be happy with this conclusion. Such a demonstration would involve state system changes and a concession on the assets test, which may not be forthcoming. From the left, it may not be different enough from ordinary waivers to prevent its use as a blueprint for other states. It would still likely cause outrage from the same Democratic members of Congress that we are working with to pass the patients' bill of rights, the coverage initiative and Medicare reform. Also, the Department is opposed to moving in this area. We would have to bring Donna in to discuss this option before approaching the state and should be prepared for a push-back.

If we choose to deny the waiver, we will need to plan a careful roll-out that minimizes the news. First and foremost, it would have to be after the NGA winter meeting, scheduled for February 26 through 29, to prevent it from becoming a central point of discussion there. Second, given the President's involvement in this issue, we may need to have him make a phone call to the Governor, Skip Rutherford, and/or Amy Rossi. Bruce, Mickey and I are available to meet with you as soon as possible. We all agree, though, that we need to get guidance from you early next week in advance of the upcoming NGA meetings.