



NEW YORK STATE SENATOR

Malcolm Smith

Letter To Dennis G. Smith: Centers For Medicare And Medicaid Services

MALCOLM A. SMITH August 29, 2007

Dennis G. Smith

Centers for Medicare and Medicaid Services

7500 Security Boulevard, Mail Stop S2-26-12

Baltimore, Maryland 21244-1850

Dear Mr. Smith:

As the leader of the New York State Senate Democratic Conference, I am writing to express our strongest concern and distress regarding the letter sent under your signature dated August 17, 2007, regarding state applications to extend eligibility under the State Children's Health Insurance Program (SCHIP). It is the strong hope of the members of my Democratic Conference that the Centers for Medicare and Medicaid Services (CMS) will withdraw this letter, change its position and work with the State of New York to provide health insurance coverage to almost 60,000 more of New York's needy children by approving the waiver application now pending before you.

First, let me point out that this Spring, the 29 Democratic Senators of the New York State Senate, in addition to our Republican colleagues, in a unanimous and bipartisan vote, adopted our State Budget for 2007-2008 with the strongest support for expanding Child

Health Plus (CHP) eligibility for families up to 400% of the federal poverty level. In fact, the extension of CHP to more of New York's uninsured children was a key element of the Governor's budget to expand coverage to all New Yorkers. We voted for this provision because as local elected officials dedicated to public health improvement, we are committed to making sure that every child has health insurance. We also know first hand that the current income guidelines for CHP in New York State do not allow coverage for many of our New York families, even though they are struggling to make ends meet. For many of our constituents, who face high housing and living costs, extending eligibility to up to 400% of the federal poverty level makes good sense from a policy and finance perspective. Our support for this provision was rooted in the experience of our own constituents, whose children need and deserve basic health insurance coverage but whose parents cannot afford it or do not have it through work.

Secondly, the standards enunciated in your letter, if adopted, would effectively limit the ability of New York State (as well as 17 other states) to extend coverage at all and would impose additional burdens on individual families seeking coverage. For example, the requirement that New York impose a one year waiting period on eligible children means that children would have to wait for coverage for a prolonged and unrealistic period. During that year, our constituents would undoubtedly forgo primary and preventive care hoping to avoid out of pocket costs, until an emergency room visit becomes the only (and far more costly) alternative. A requirement that New York enroll 95% of eligible children before expansion can be authorized is also unduly harsh and punitive, particularly since New York has done a good job of insuring about 88% of those currently eligible.

Finally, our vote in support of this expansion relied in good measure on our understanding, based on prior waiver applications, that CMS supported state flexibility and state-specific initiatives. In fact, in prior years we have adopted State budgets that required waivers from

CMS to make other changes to our State Medicaid program, and CMS worked with our State Health Department officials to adopt the changes that reflected New York's state-specific needs. Thus we were frankly stunned and perplexed by your letter dated August 17th which appears to set entirely new requirements for expansions of CHP eligibility even though CMS did not formally adopt new regulations, and did not provide any opportunity for notice and comment. We believe that legislators are entitled to rely on the underlying laws and supporting regulations that are in effect when they vote, as we did, to make important policy changes that affect their constituents. In this case, the process by which CMS announced a new and different set of criteria appear to us to be without legal justification and frankly, not in the best interests of our State. This is especially so when Congress is in the midst of debating new SCHIP legislation which will, we hope, clearly extend eligibility to more needy children. We are optimistic that ultimately, Congress will be able to adopt this expansion of eligibility legislation with the President's support since extending child health coverage to the almost 9 million uninsured children in America, we believe, is in everyone's best interest.

We understand the State's application for a waiver is still pending before your agency at this time. As those who voted for this CHP expansion, with legitimate expectation that such expansions were consistent with your interest in state flexibility and would be approved, we urge your approval of New York's plan, and your prompt withdrawal of your letter of August 17.

Please do not hesitate to contact me if you have any questions regarding the issues I have raised here.

Sincerely,

Malcolm A. Smith

cc: Members of Democratic Conference, NYS Senate

Members of NYS Congressional Delegation