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## FAILING TO DELIVER: Administration's Medicaid Waiver Policy Excludes Many Katrina Survivors and Provides No Guarantee of Full Federal Financing By Edwin Park

The Administration has come out against bipartisan Senate legislation (S. 1716) introduced by Senators Charles Grassley (R-IA) and Max Baucus (D-MT) that would provide temporary, fully federally funded Medicaid coverage to low-income survivors of Hurricane Katrina.<sup>1</sup> Despite the endorsement of the National Governors Association, the support of Senate Majority and Minority Leaders Bill Frist and Harry Reid when the legislation was introduced, and the support of numerous health care provider groups such as the American Medical Association and the American Hospital Association and of charities like the Red Cross, Senators Grassley and Baucus have been unable to bring the legislation to a vote on the Senate floor.<sup>2</sup> Several Senators are blocking the legislation.

The Administration's opposition appears to be a key factor in preventing Senate consideration of the legislation, which enjoys widespread Senate support and almost certainly would pass by an overwhelming margin if brought to a vote. Various news accounts report that the Administration has been working against the bill,<sup>3</sup> and HHS Secretary Michael Leavitt has now sent a letter to Congressional leaders objecting to the bill.<sup>4</sup>

While acknowledging that Medicaid is an appropriate vehicle to provide essential health care services to low-income Katrina survivors over the next several months, the Administration argues that the bipartisan Senate legislation is unnecessary. By separately negotiating individual Medicaid "waivers" with states that are providing health care to Katrina survivors who have been displaced from their homes, the Administration claims it can accomplish the goals of the bipartisan legislation in providing immediate Medicaid coverage to low-income Katrina survivors and ensuring full federal funding for states (and health care providers) in providing health care services to these people.

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<sup>1</sup> See, for example, Letter from Michael O. Leavitt, Secretary of Health and Human Services, to Senate Minority Leader Harry Reid, September 27, 2005.

<sup>2</sup> On September 26, Senators Grassley and Baucus sought unanimous consent to bring the legislation to a vote. Senator Ensign (R-NV) objected and Senator Sununu (R-NH) spoke in support of Senator Ensign's objection.

<sup>3</sup> See, for example, David Rogers, "Senate Clears Spending Bills; Farm, Military Benefit," *Wall Street Journal*, September 23, 2005; and Peter G. Gosselin and Ricardo Alonso-Zaldivar, "Limiting Government's Role: Bush favors one-time fixes over boosting existing programs to help Katrina victims," *Los Angeles Times*, September 23, 2005.

<sup>4</sup> Letter from Michael O. Leavitt, *op cit*; and Emily Heil, "Republicans Block Vote on Measure to Expand Medicaid," *Congress Daily A.M.*, September 27, 2005.

In fact, careful scrutiny of the Administration's waiver policy reveals that it fails to meet either of these two criteria. The waiver policy differs sharply in this and a number of other respects from the bipartisan Senate legislation.

## The Administration's Waiver Policy for Katrina Survivors

The Administration is using state-by-state waivers under section 1115 of the Social Security Act to allow states to provide Medicaid coverage to Katrina survivors displaced from their homes because of the hurricane. These waivers would allow states to provide coverage to eligible individuals for up to five months, during the period between August 24, 2005 and June 30, 2006.

As of September 27, four states — Alabama, Florida, Mississippi and Texas — have secured such waivers. The waivers allow these states to cover temporarily, through their Medicaid programs, Katrina survivors who have been evacuated from Louisiana, Alabama, or Mississippi. Survivors made eligible through these waivers will receive the health care benefits otherwise provided through the Medicaid program operated by the state in which they are currently residing. Health care providers who furnish services to Katrina survivors will be paid under their state's standard Medicaid reimbursement rates. Administration officials have claimed its waiver policy is superior to the Grassley-Baucus legislation and that "the states will be recompensated in full" for the Medicaid services they provide to displaced residents of the three affected states.<sup>5</sup>

## Shortcomings of the Waiver Policy

The Administration's waiver policy falls short in a number of respects. The waiver policy excludes many low-income Katrina survivors from receiving health care coverage. It also fails to provide a guarantee that states providing Medicaid coverage to low-income Katrina survivors will be made whole financially.

Nor does it offer any additional federal Medicaid financing. Rather, Louisiana, Mississippi, and Alabama would be financially responsible for their normal percentage share of the Medicaid costs of all of their displaced residents, despite the severe financial burdens this will place on these states at a time when their economies have been damaged and their revenue bases compromised. States and many providers and beneficiaries also face delays while states navigate the bureaucratic hurdles entailed in the waiver approval process.

### 1. Waiver Policy Excludes Large Numbers of Low-Income Katrina Survivors

The Administration's waiver policy forces states to deny Medicaid coverage to many low-income Katrina survivors solely because the survivors do not fit into one of Medicaid's traditional eligibility

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<sup>5</sup> Julie Rovner and Emily Heil, "Opposition Stalls Bipartisan Medicaid Bill for Katrina Victims," *Congress Daily A.M.*, September 23, 2005; and Press Briefing by Scott McClellan, September 22, 2005, available at <http://www.whitehouse.gov/news/releases/2005/09/20050922-2.html#1>.

“categories.” Under Medicaid, eligible individuals must generally fit into one of five coverage groups or categories: children, pregnant women, parents in families with dependent children, seniors and individuals with serious disabilities. Some of these categories themselves have additional restrictions associated with them. For example, to fit into the disability category, a person generally must show that his or her medical condition either will last for at least 12 months and prevent the person from working or is likely to result in the person’s death. A person who has several broken limbs and other severe injuries and cannot work, but expects to recover within 12 months, would not be eligible for Medicaid.

The waiver policy explicitly continues the use of these categories for Medicaid coverage provided to Katrina survivors.<sup>6</sup> This means that many Katrina survivors who now are severely impoverished but do not fit into one of these categories — particularly poor adults under 65 who do not have dependent children and are not sufficiently disabled — would be left out, even if they have serious medical conditions.

Recognizing that these eligibility rules should not get in the way of providing needed assistance to Katrina survivors, the National Association of State Medicaid Directors has specifically recommended that all Katrina survivors be covered, irrespective of whether they fit into a traditional Medicaid category.<sup>7</sup> Recent surveys conducted by Louisiana Medicaid officials and the Kaiser Family Foundation/Harvard University bear out these concerns. The Louisiana surveys show that many destitute Katrina survivors in Louisiana shelters are being denied Medicaid solely because of these categorical eligibility restrictions. The Kaiser/Harvard survey found that a large percentage of adult survivors without minor children who are living in Houston shelters — a group that does not fit into one of the traditional Medicaid categories — are uninsured and have significant health care needs. The survey also found that some of these evacuees were going without medicines they need.<sup>8</sup>

The Administration may claim its waivers allow states to reimburse providers for “uncompensated care” provided to Katrina survivors who are not eligible for Medicaid under the waiver and that as a result, adults without dependent children will receive assistance. But the waiver policy does not require states to establish such pools. In addition, while three of the four states with approved waivers are permitted to establish uncompensated care pools,<sup>9</sup> it is unclear what the funding levels of

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<sup>6</sup> See Centers for Medicare and Medicaid Services, “Multi-State Section 1115 Demonstration Application Template Medicaid and SCHIP Coverage for Evacuees of Hurricane Katrina.”

<sup>7</sup> Letter from National Association of State Medicaid Directors, “Hurricane Disaster Relief Assistance for States,” September 8, 2005.

<sup>8</sup> Donna Cohen Ross and Victoria Wachino, “Medicaid Categorical Eligibility Rules are Proving a Major Obstacle to Getting Health Care Coverage to Impoverished Katrina Victims in Louisiana,” Center on Budget and Policy Priorities, September 26, 2005; and Washington Post/Kaiser Family Foundation/Harvard University Survey of Hurricane Katrina Evacuees, September 2005.

<sup>9</sup> Florida’s waiver does not include an uncompensated care pool.

## Senators Grassley and Baucus Express Dismay at Administration's Opposition to S. 1716

On September 27, Health and Human Services Secretary Michael Leavitt sent a letter to Senate leaders expressing Administration opposition to bipartisan Senate legislation to provide temporary, fully federally funded Medicaid coverage to survivors of Hurricane Katrina. In response, Senators Grassley and Baucus dispatched a letter to Secretary Leavitt later the same day saying they were “puzzled” at how the Administration’s waiver policy would achieve “our shared goal” of addressing the immediate health care needs of Katrina survivors. The strongly worded Grassley-Baucus letter noted that:

- The Administration’s opposition to coverage of all low-income Katrina survivors regardless of whether they fit into a traditional Medicaid eligibility category is inconsistent with the Administration’s response to the events of September 11, 2001. After the terrorist attacks, the Administration approved a waiver that allowed the state of New York to provide Medicaid coverage on a temporary basis to individuals “not normally eligible for Medicaid.” Senators Grassley and Baucus noted that “the waiver in Texas does not provide for the same eligibility for Katrina evacuees as was provided through the New York waiver” and asked “why the Katrina evacuees do not deserve the same assistance provided to the people of New York?”
- The Administration’s claim that the uncompensated care pools established under the waivers would cover individuals not eligible for waiver coverage — like adults without dependent children — is questionable. Grassley and Baucus stated that “we believe that it is fairly obvious the Department [of Health and Human Services] does not have the statutory authority” to establish uncompensated care pools under the waivers. They also pointed out that it was unclear how the pools would be funded and at what levels, and how the Department would protect against fraud and abuse under these pools.
- The Administration’s waiver policy requires Louisiana, Mississippi and Alabama to remain financially responsible for Katrina survivors displaced to other states and that the Department does not have the statutory authority to waive those payments. Grassley and Baucus asked whether the Department believed that the “affected states do not need assistance” or whether the Department intended to somehow provide some assistance to the affected states to meet these payments. They cited the example of New York. After the events of September 11, New York provided temporary disaster relief Medicaid through a waiver with the hope that the federal government would cover their state matching costs but they still not had received any funds. Grassley and Baucus asked Secretary Leavitt “what assurances can you give states that they will not find themselves in similar circumstances?”

the pool will be, what will be the eligibility criteria for individuals used, which providers will be reimbursed, what services will be covered, and what additional federal conditions may be placed on the disbursement of these funds. For example, will these uncompensated care pools provide comprehensive coverage, including ongoing treatment of complex medical conditions and prescription drugs, or will these pools cover only emergency services provided to Katrina survivors in the immediate aftermath of the hurricane? Due to the uncertainty associated with the

uncompensated care pools established under the waivers, providers will not know if they will be adequately reimbursed for the health and long-term care services they provide to Katrina survivors who are not otherwise eligible for Medicaid under the waivers. As a result, some providers may be reluctant to provide all the services that Katrina survivors need.

Unlike the Administration's waiver policy, the bipartisan Senate legislation would cover (for five months) all adult Katrina survivors who have incomes below the poverty line, without regard to whether an individual fits into one of the traditional Medicaid categories. The legislation also would cover children and pregnant women survivors with incomes below 200 percent of the poverty line, and people with serious disabilities have incomes below 300 percent of the "SSI benefit standard" (about 250 percent of the poverty line).<sup>10</sup> The legislation also recognizes the need for some financial assistance for health care providers who treat Hurricane Katrina evacuees. It establishes an uncompensated care pool for providers as a complement to, not a substitute for, Medicaid eligibility for all poor Katrina survivors.

## 2. Waiver Allows Differential Treatment of Survivors on a State-by-State Basis

The waiver policy also permits differential treatment of Katrina survivors based on the state to which they had been evacuated. In many cases, individuals and families fleeing the devastation of Hurricane Katrina had no choice of the state to which they were relocated. For example, the *New York Times* reported that one planeload of evacuees from New Orleans expected to go to Texas but were told mid-flight they were being sent to New Mexico.<sup>11</sup> The waiver policy fails to produce a national eligibility policy for low-income Katrina survivors.

The waivers permit different eligibility rules across states for Katrina survivors. States serving displaced Katrina survivors can use simplified eligibility criteria suggested by the federal government, or they can use the Medicaid eligibility criteria for each survivor's home state. For example, states can choose to cover a working parent from Louisiana with annual income up to 100 percent of the poverty line (\$16,090 for a family of three) under the simplified criteria, or they can choose to cover such a parent only if the parent has income of no more than 20 percent of the poverty line (\$3,168), since that is Louisiana's Medicaid income eligibility limit for parents. A state electing to base eligibility on the Medicaid eligibility levels of the home states would have to apply three separate eligibility criteria for Katrina survivors, depending on whether a survivor is from Louisiana, Mississippi, or Alabama. For example, under such a policy, a parent making \$5,000 would be eligible for Medicaid if the parent had been evacuated from Mississippi but be denied Medicaid if the parent had been evacuated from Alabama or Louisiana.<sup>12</sup> This could prove confusing for health care providers.

States using the simplified eligibility criteria also could choose to impose their standard assets test or to waive them. States using home-state eligibility levels would have to impose whatever asset test

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<sup>10</sup> Coverage for Katrina survivors may be extended another five months by the President.

<sup>11</sup> Timothy Egan, Maureen Balleza, David Carillo Penaloza, "Storm and Crisis: The Evacuees; Uprooted and Scattered Far from the Familiar," *New York Times*, September 11, 2005.

<sup>12</sup> Mississippi covers working parents in families with incomes up to \$5,496 (34 percent of the federal poverty line) while Alabama only covers parents with incomes up to only \$3,048 (19 percent of the poverty line), and Louisiana covers parents with incomes up to \$3,168 (20 percent of the poverty line).

is required in the home state. The waiver policy could result in a family or individual being eligible for Medicaid coverage in one state, while an identical Katrina survivor would be denied coverage in another state.

Furthermore, there is no guarantee that all states serving Katrina survivors will apply for or receive approval for a waiver under the Administration's policy. Some individuals and families in states without a waiver may not receive health care assistance.

The bipartisan Senate legislation, in contrast, would create a uniform, simplified eligibility policy. The legislation's eligibility levels, described above, would apply to Katrina survivors in all states, and all states would provide temporary Medicaid coverage to survivors. Each state also would use a streamlined application process and would not impose an assets test. Under this national policy, providers treating evacuees would have clear eligibility rules to follow about which evacuees are covered under Medicaid, regardless of the state in question or the home state of the evacuees.

### 3. Waivers Provide No Guarantee of Full Federal Funding for States Serving Katrina Survivors

Despite promises to the contrary, the Administration's waiver policy does not guarantee full federal funding for states serving Hurricane Katrina evacuees who were displaced from their home states of Louisiana, Mississippi and Alabama. The Administration claims it will "make states whole" by providing 100 percent federal funding for Medicaid coverage related to Hurricane Katrina in all states, but without the enactment of federal legislation, the Administration has no legal authority to do this. And in fact, the Administration's waiver policy would merely provide the same level of federal funds to the states serving Katrina survivors as the federal government would be providing to Louisiana, Mississippi and Alabama if the survivors had remained in those states and received Medicaid coverage at home.<sup>13</sup>

In other words, the federal government would simply pay its normal percentage share of these costs. The remaining portion of the costs of providing health care to these low-income survivors would have to be financed by the survivors' home states. To enforce this requirement, the Administration has required Louisiana, Mississippi, and Alabama to sign "IOUs" to help pay for the costs that other states incur in providing health care to evacuees.<sup>14</sup>

This means that, as under Medicaid generally, the federal government will pay for only a percentage of a state's Medicaid costs in covering Katrina survivors under these waivers. This percentage will equal the federal Medicaid matching rate in the home state from which a Katrina survivor has evacuated. The remainder of the cost of providing health care to survivors would be the responsibility of the home state from which the survivor has come. In fiscal year 2006, the federal government will pay for just under 69.79 percent of Louisiana's Medicaid costs, with Louisiana paying 30.21 percent. Under the Administration's waiver policy, when Texas provides

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<sup>13</sup> Starting October 1, for fiscal year 2006, the federal government pays for 69.79 percent of Louisiana's Medicaid costs, 76.0 percent of Mississippi's Medicaid costs, and 69.51 percent of Alabama's Medicaid costs.

<sup>14</sup> See Letter/Memorandum of Understanding between the Centers for Medicare and the Louisiana Division of Medicaid, September 16, 2005; Letter/Memorandum of Understanding between the Centers for Medicare and the Mississippi Division of Medicaid, September 16, 2005; and Letter/Memorandum of Understanding between the Centers for Medicare and the Alabama Medicaid Agency, September 16, 2005

coverage to a Louisiana resident, Texas will receive Louisiana's federal matching percentage (69.79 percent of the costs for providing health care services to that person). Louisiana will be financially responsible for the other 30.21 percent of Medicaid costs that Texas incurs on behalf of that Louisiana resident, despite the devastation of Louisiana's revenue base.

Given the financial hardship that these three directly affected states will face for some time, they are unlikely to be able to shoulder this large financial burden. The Administration's waiver policy does not discuss what will happen if these states cannot pay their "IOUs." This could mean that Texas and other states providing Medicaid to Katrina survivors may end up not being "made whole." If that occurs, these states may feel compelled to drop temporary coverage for Katrina survivors or may have to pay for a portion of the Medicaid costs themselves. Similarly, providers furnishing health and long-term care services to Katrina survivors may end up with large uncompensated care bills if the three home states do not meet their financial obligations.

Alternatively, this could mean that Texas and other states receive their full 100 percent federal payments from the federal government, but the home states may be subject to financial penalties for failure to pay. Would the Administration use its existing authority to withhold other federal Medicaid matching funds to which Louisiana, Mississippi, and Alabama otherwise are entitled if those states cannot pay the state share of the costs that other states incur in providing health care to evacuees? If so, this would subject these three states' Medicaid programs to considerable financial instability and further weaken an already damaged health care infrastructure in these states.

Under any of these scenarios, states risk being left holding the bag financially under the Administration's waiver policy. That, in turn, could lead to some low-income Katrina survivors going without medically necessary care because providers decline to accept them. Or it could lead to providers not being adequately reimbursed for the care they have provided to needy Katrina survivors and having to shift costs to other payers.

To avert such problems, the legislation sponsored by Senators Grassley and Baucus increases the federal Medicaid matching rate to 100 percent for Medicaid services and administrative costs related to Katrina survivors who are eligible for the bill's temporary Medicaid coverage. There would be no requirement that the three directly affected states bear those costs.

#### 4. Waiver Policy Provides No Additional Financial Support for the Medicaid Programs of Louisiana, Mississippi and Alabama

As discussed above, under the waiver policy, Louisiana, Mississippi and Alabama are responsible for a substantial portion of the Medicaid costs of residents who have been displaced to other states. This financial burden is in addition to the greater demand for Medicaid services within these three states themselves, as a result of the hurricane. In particular, Louisiana and Mississippi face an influx of Katrina survivors into their Medicaid programs because many individuals and families suddenly have no income or assets and have thus become eligible for Medicaid. The waivers do not increase federal financing of the existing Medicaid programs in these three states or otherwise provide any additional financial support to the three states to help these states meet the increased health care needs they face at a time when their economies and revenue bases have sustained a heavy blow (especially in Louisiana).

This could result in Louisiana having to reduce provider reimbursement rates even as many hospitals and nursing homes in the state are trying to rebuild, or feeling compelled to cut back its already restrictive Medicaid eligibility limits at a time when more of its citizens need assistance. Or, these steep new Medicaid financing burdens could compel Louisiana and other directly affected states to divert scarce state funds from needed recovery, repair, and reconstruction efforts.

The bipartisan Senate legislation would address these matters as well, temporarily increasing the federal matching rate to 100 percent for Medicaid services in parishes and/or counties declared disaster areas in the three directly affected states.

#### 5. Requires Time-Consuming State-by-State Waiver Process

The Administration claims its waiver policy provides immediate assistance because it does not require the time that it takes Congress to enact legislation. This claim is misleading. By definition, under the Administration's waiver policy, each state must apply for, negotiate, and receive final approval for a waiver from the federal government to provide Medicaid to Katrina survivors. Going through the bureaucratic waiver approval process takes time. Moreover, there is no requirement that every state apply for waivers, and some states with Katrina survivors may lag.

Administration officials have stated that the Medicaid coverage provided under the bipartisan legislation "would take a lot of time."<sup>15</sup> This is ironic because the Administration's opposition has been a key factor in delaying passage of the bipartisan Senate legislation that Senators Grassley and Baucus introduced on September 15. If the Administration would drop its opposition, Congress could enact the legislation swiftly and provide Medicaid coverage to impoverished Katrina survivors on a rapid basis. States would not require federal approval before providing coverage and receiving full federal funding. In addition, providers would have assurance that they would be appropriately reimbursed for the health and long-term care services they provide to Katrina survivors.

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<sup>15</sup> Rovner and Heit, *op cit*.