

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

September 27, 2005

The Honorable Michael O. Leavitt
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Mr. Secretary:

The aftermath of Hurricane Katrina has left hundreds of thousands of Americans displaced and in need of assistance. We want to, first and foremost, thank you for your assistance with Katrina relief. We share the goal of addressing the immediate health care needs of people affected by this disaster.

We have, however, chosen different paths for achieving our shared goal. We have introduced and sought to pass the Emergency Health Care Relief Act, S.1716, which would provide immediate coverage for a temporary period for Americans displaced by Hurricane Katrina, directly assist the states of Louisiana, Mississippi and Alabama, and provide a means for survivors to retain their private health insurance coverage. We believe that this program can be very quickly and efficiently implemented by the Department. We have noted your opposition to our bill and are puzzled at how you expect to achieve our shared goal through the Department's waiver process. Specifically, we would raise the following questions:

1. After the September 11, 2001, attacks on New York City, the Department quickly approved a waiver to provide Medicaid coverage for New Yorkers, even those not normally eligible for Medicaid, for a temporary basis. While you refer to the coverage provided through the waiver program as "comprehensive relief," the waiver in Texas does not provide for the same eligibility for Katrina evacuees as was provided through the New York waiver. Could you please explain to us why the Katrina evacuees do not deserve the same assistance provided the people of New York?
2. Your waiver process appears to contemplate having those Katrina evacuees without health care coverage covered by an uncompensated care fund. Providers will provide charity care and then seek reimbursement from the uncompensated care fund. This raises numerous questions for us. First, how does the Department believe it has the statutory authority to provide funding for this uncompensated care fund when we believe it is fairly obvious the Department does not have statutory authority to do so? Second, it is unclear to us how much money will be needed for the uncompensated care fund for Texas and all other host states. How

much money does the Department anticipate needing for the fund? Finally, the Medicaid program has known costs, payment rates and control systems, which is why we sought to use the Medicaid program for the temporary assistance program. How does the Department plan to control expenditures for the uncompensated care fund to protect against fraud and abuse? What accountability measures will apply to these new funds?

3. The states of Louisiana, Mississippi and Alabama have suffered tremendous devastation that will drastically affect their ability to meet state obligations, including their share of Medicaid. The Department's waiver process simply bills claims for Katrina evacuees in Texas (and other host states) back to Louisiana, Mississippi and Alabama. When the bill comes due for those claims, we would anticipate that the Department is going to expect payment since the Department does not have the statutory authority to waive those payments. Will the Department be seeking a statutory response or does the Department believe that the affected states do not need assistance? If the Department does support relieving Louisiana, Mississippi, and Alabama of some portion of the state share requirement, what is your projection for the cost of the assistance you might provide those states? New York provided disaster relief Medicaid after September 11, with the hope that their state match costs would be paid for through FEMA grants, but they are still appealing FEMA's denial of payment and have not received any funds. What assurances can you give states that they will not find themselves in similar circumstances?
4. We believe that allowing individuals to preserve their private insurance coverage is an important principle. The bill that you oppose, the Emergency Health Care Relief Act, provides for an Disaster Relief Fund so that people may keep private coverage. Your waiver process does not appear to provide for assistance to people wishing to keep private coverage except perhaps through the uncompensated care fund which we have already established has no money. Do you oppose preserving private coverage for Katrina survivors?
5. We believe that the welfare provisions of S.1716 are very important. Though H.R. 3672 the TANF Emergency Response and Recovery Act of 2005 (Public Law 109-68) makes some modest progress towards getting states the help they need to provide vital support services to evacuees and those in the directly impacted states, we remain concerned that P.L. 109-68 falls short in several ways. Working in close conjunction with members from the directly affected states, the Senate bill makes a number of improvements to P.L. 109-68. P.L. 109-68 limits assistance to non-recurrent short-term cash benefits. S.1716 allows funding to be available for any allowable TANF expenditure. We understand that states would like the flexibility to use these funds to provide non-cash services such as employment readiness and job training for a period of time that is not limited to four months. Do you agree that it is appropriate to give states the greatest amount of flexibility to serve the broad needs of these families? Additionally, the Senate bill lifts the "cap" on the Contingency Fund which would

direct additional resources to states that are providing services to Katrina survivors. Do you agree that states should be confident that they will be reimbursed for the costs of helping these families?

6. We note that in your letter, you took special exception to the provision in Title II – TANF RELIEF that would allow states, such as Tennessee, that are currently drawing down Contingency Funds in order to meet the needs of their existing caseload to also qualify for the Contingency Fund in order to meet the needs of evacuees. Are we to infer from your letter that states like Tennessee should be prohibited from accessing the Contingency Fund to provide services to evacuees simply because of a dire state fiscal condition that made them eligible for the Contingency Fund under existing law?

We would also like to bring to your attention certain provisions of our bill that we would be surprised to find the Department opposes.

1. The bill provides the Secretary with the authority and funding to assist providers whose ability to stay in business has been jeopardized. We consider it critical that hospitals, physician practices and other providers get immediate assistance so that they may continue to function. If the doors close on a hospital, it makes rebuilding that community that much more difficult. We hope you would agree.
2. The bill provides additional assistance for people who have lost their job through extensions of unemployment insurance. We feel that it is appropriate and necessary.
3. The bill provides additional funding for the Office of the Inspector General to ensure that relief funds are appropriately spent. We certainly hope you approve of that provision.
4. The bill protects the taxpayer by reducing the micro-purchase threshold which limits purchases made outside of existing federal procurement laws. These purchases are commonly made through the use of government credit cards, a medium which has a history of fraud, waste and abuse of taxpayer dollars. The micro-purchase limits were capped by law at \$2,500 with an emergency limit of \$15,000 domestically and \$25,000 abroad. These limits were drastically raised to \$250,000. While we understand the need for increased credit limits to help deal with a disaster of Katrina's magnitude, any increase should address the problem at hand, not create new ones.

We truly believe that we have similar interests in assisting people displaced by this disaster. While we are troubled that you have chosen to oppose our effort, we will continue to work with you to meet our common goal. In that spirit, we respectfully request that you respond to the questions by this Friday, September 30, so that we may better understand how you intend to proceed.

Sincerely,


Charles E. Grassley


Max Baucus

cc: The Honorable Bill Frist
The Honorable Harry Reid
The Honorable Mitch McConnell
The Honorable Richard Durbin