

May 21, 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Mitch McConnell
Majority Leader of the United States Senate
Washington, D.C. 20510

The Honorable Chuck Schumer
Minority Leader of the United States Senate
Washington, D.C. 20510

Dear Speaker Pelosi, Minority Leader McCarthy, Majority Leader McConnell, and Minority Leader Schumer,

We are writing with urgency to ask that you protect our states by reversing a critical flaw in the Families First Coronavirus Response Act (FFCRA). The so-called “maintenance of effort” (MOE) provision in FFCRA is a budget straitjacket for our states and, if maintained, will gravely threaten the integrity of state budgets in 2020, 2021, and beyond.¹ The harm from this provision will far outlive any help Congress intended for our states.

While we appreciate that Congress set out to provide assistance in the form of additional Medicaid funds during this challenging time, if Congress intended to provide lasting fiscal relief for our state budgets, it has achieved the opposite. States are about to face a sea of red ink and this provision shackles states’ hands just as they prepare to take that plunge.²

Because some of Members of Congress as well as special interest groups on K Street have painted a picture that this provision is innocuous, or even helpful, you may not realize the havoc it is beginning to wreak at the state level. To be very clear, the “MOE” handcuff provision requires our states to maintain the eligibility of every single person that is on, or comes onto, our Medicaid programs regardless of eligibility. It also bans states from following our own laws designed to improve program integrity.³

If you are concerned that this is just hyperbole engendered from the conservative right, please review the actual provision that you voted for. It says that states “may not receive” the financial assistance unless everyone on the program, even someone who is or becomes ineligible, is:

*treated as eligible for such benefits through the end of the month in which such emergency period ends unless the individual requests a voluntary termination of eligibility or the individual ceases to be a resident of the State;*⁴

Here is how this actually plays out in the states: an individual who recently earned six figures at their job is temporarily laid off. Based on his unemployment insurance income level, he is eligible for Medicaid (Congress has also required states to disregard the \$600 per month pandemic UI in determining Medicaid eligibility)⁵. After two months, he returns to work, earning six figures again. However, because of this provision, states must keep him on the Medicaid program. The “emergency period” is expected to last well into next year according to the Congressional Budget Office and could be much longer.⁶ And that is the best case—some are already pushing for this provision to be extended indefinitely.

It almost appears that this provision was passed with the explicit intent to create a “Medicaid-for-all” program, giving out taxpayer-funded benefits regardless of income or eligibility. But states are paying the price.

The result is fiscal disaster.

Yes, Congress provided states with a slight bump in the federal portion of Medicaid spending. However, states are still responsible for a significant share of all Medicaid spending. And Medicaid spending accounts for a massive portion of state budgets. In fact, states now spend one out of every three state dollars on Medicaid.⁷

Now, as Medicaid enrollment is projected to spike by as much as 30 percent or more⁸, Congress has required states to shoulder the financial burden not only of those individuals who are truly eligible, but also those who are not actually eligible for benefits.

It is reckless. It is fiscally irresponsible. It is devastating for state budgets. But it is also probably illegal. Medicaid law requires that payments be for eligible individuals, not people who are clearly ineligible.⁹ While Medicaid has already achieved the dubious record of spending \$75 billion per year in improper payments¹⁰, we would hope that Congress prefers the program to avoid intentional, widescale fraud.

Unfortunately, this provision suggests otherwise. In fact, it requires fraud.

We know who suffers when the Medicaid program is stressed by budget overruns. The truly needy get squeezed, provider payments get cut, nursing homes go without, and the general public sees education funding getting slashed and roads going unrepaired. It is happening now, and it will get worse if states are forced to cover ineligible people on Medicaid, costing them untold billions in state funds.

At a time like this, states need more flexibility and more program integrity, not less. Congress and the federal government have recognized this before. There have been changes made far and wide, including in other welfare programs like food stamps, that give states much broader authority to make administrative changes. The food stamp program is 100 percent federally funded, and yet states are given authority to select options that are best for them. But when it comes to Medicaid, Congress's actions have undermined states' abilities to do what is best for a program they pay billions of state dollars to operate every year.

We ask that you and your colleagues consider providing states the additional flexibility that they need to manage their state budgets by eliminating this MOE provision from FFCRA. Making this change is a surefire way to give fiscal relief to states that does not cost taxpayers or add to the already staggering federal deficit. In fact, it will save billions, without impacting a single person who is truly eligible for Medicaid. With this one practical change, Congress can deliver a win for taxpayers, the truly needy, and state budgets. That is the kind of win our states, and country, need right now.

Thank you for your consideration,

Alaska Policy Forum

Americans for Prosperity

Americans for Tax Reform

Caesar Rodney Institute

Civitas Institute

Club for Growth

Commonwealth Foundation

Council for Citizens Against Government Waste

Foundation for Government Accountability

Freedom Foundation of Minnesota

FreedomWorks

Heritage Action for America

Idaho Freedom Foundation

Kansas Policy Institute

MacIver Institute

Maine Policy Institute

Mississippi Center for Public Policy

Nevada Policy Research Institute

Oklahoma Council of Public Affairs

Palmetto Promise Institute

Pelican Institute for Public Policy

Rio Grande Foundation

Texas Public Policy Foundation

Virginia Institute for Public Policy

CC: Chairman Pallone, Ranking Member Walden, Chairman Grassley, Ranking Member Wyden

¹ Jonathan Ingram, Sam Adolphsen, and Nicholas Horton, "Extra COVID-19 funds come at a high cost to states," Foundation for Government Accountability (April, 2020) <https://thefga.org/research/covid-19-medicaid-funds/>

² Dan White et al., "Stress-testing states: COVID-19," Moody's Analytics (2020), <https://www.economy.com/economicview/analysis/379097/StressTesting-States-COVID19>.

³ Sec. 6008 of the Families First Coronavirus Response Act; Public Law No: 116-127.

⁴ Ibid.

⁵ Sec. 2104 of the Coronavirus Aid, Relief, and Economic Security Act; Public Law No: 116-136.

⁶ Phillip Swagel, "Preliminary Estimate of the Effects of H.R. 6201, The Families First Coronavirus Response Act," Congressional Budget Office (April 2020) <https://www.cbo.gov/system/files/2020-04/HR6201.pdf>

⁷ Nicholas Horton, "The Medicaid pac-man: How Medicaid is consuming state budgets," Foundation for Government Accountability (October, 2019) <https://thefga.org/research/medicaid-pac-man/>

⁸ Jonathan Ingram and Nicholas Horton, "On the Brink: state budgets in light of the COVID-19 outbreak," Foundation for Government Accountability (May, 2020) <https://thefga.org/research/covid-19-state-budgets/>

⁹ 42 U.S.C. 1396d

¹⁰ Brian Blase and Aaron Yelowitz, "Why Obama Stopped Auditing Medicaid," Wall Street Journal (November 2019) <https://www.wsj.com/articles/why-obama-stopped-auditing-medicaid-11574121931>