

Congress of the United States
Washington, DC 20515

January 13, 2009

Via Electronic Transmission

The Honorable Donald L. Carcieri
Office of the Governor
The Rhode Island State House
Executive Chamber
Providence, RI 02903

Dear Governor Carcieri:

We write in regard to the Medicaid Global Waiver.

Despite numerous public briefings held in Rhode Island, a detailed plan and justification are still not public and accessible. Collectively and individually, we have made repeated requests for specific information, but we are still awaiting key details. For example, the State has not provided data on the impact on beneficiaries, nor has it provided projections of state spending, savings, or the assumptions and methodologies on which such projections are based. Absent such basic information, it is extremely difficult for us to make an informed and responsible evaluation of the waiver.

From the information we have, one aspect of the waiver seems quite clear. The aggregate cap on spending could leave the State up to \$842 million short of its projected obligations over five years. This is because the cap is based on national projections in the President's Budget, and does not factor in Rhode Island's specific circumstances – including a significant aging population and skyrocketing unemployment. While the President's Budget and the waiver assume an unemployment rate of only 4.9 percent, Rhode Island's unemployment rate is currently 9.3 percent. By the State's own estimates – which understate the problem by assuming a maximum unemployment rate of 8.0 percent – 53,433 people will become eligible for Medicaid due to increased unemployment. Because of the cap, the federal share of the costs of enrollees above the cap is at stake.

In these uncertain economic times, we believe that the cap could pose serious risks to the Medicaid program, leading to potentially unprecedented cuts to providers and cost-shifting to the insured as a result. Moreover, unless the State maintains and adheres to an annual target for expenditure consistent with the five-year cap, budgetary pressures and policy decisions could result in accelerated early spending, creating significant shortfalls in the last years of the waiver. Since the out years extend beyond the term of the current administration, that creates an unfortunate incentive with no apparent check or balance in the waiver.

We are aware that Vermont is operating under an aggregate cap. However, Vermont's cap is based on a generous growth rate of 9.0 percent. This waiver is based on a growth rate of only 7.8 percent, significantly less than the State's original proposal of 9.2 percent and its revised proposal of 10.2 percent. Moreover, Vermont's waiver was not approved during a significant economic downturn.

One of the waiver's main programmatic reforms designed to achieve savings is to rebalance long-term care – a goal that we share as long as seniors and the disabled receive the care that they need. However, it is difficult for us to evaluate whether that will be the case, since the State has not provided an analysis of those who will be affected, or indicated how much funding it will commit to avoid waiting lists for those in high need. More significantly, the State's analysis to determine the adequacy of infrastructure for home and community-based services is still months away from completion, amidst widespread doubts about such adequacy. Finally, we are aware of grave concerns over the State's own administrative preparation and capability to effect these complex and substantial changes in a timely manner, and our inquiries to the State have given us little basis for comfort or reassurance.

Aside from a general discussion of proposed reforms to long-term care, the waiver postpones specific changes in eligibility, benefits, and cost-sharing by establishing an unprecedented, expedited approval process. Under this process, the scope of the changes that could be made is seemingly unlimited, and such changes could fundamentally alter the Medicaid program and the safety net on which hundreds of thousands of Rhode Islanders rely. There are no protections to ensure that essential benefits are available to those for whom they are medically necessary, and the specific changes that the State will seek remain unknown. Such changes will be subject to approval by the Obama administration, which did not have the opportunity to review the waiver and can be expected to make its own judgments about whether such changes are consistent with national policy. Unless detailed changes are specified, there is no way that we can evaluate the benefits of flexibility versus the risks to beneficiaries.

You have assured us that if a problem arises, the State may unilaterally terminate the waiver at any time, for any reason. However, because the global waiver subsumes all other waivers, including the RItE Care waiver – through which thousands of Rhode Islanders receive coverage – it is unclear whether a withdrawal would reinstate these waivers or revert the program to the state plan (as coverage existed before any waivers). Moreover, the waiver expressly states that if it is terminated early, the cap will be enforced at that time – meaning that if the State withdraws because spending has exceeded the cap, it will still have to repay the excess federal funds.

In the past, the State has been granted waivers based upon specific changes supported by detailed analyses. Indeed, this approach could have been used by the State to achieve specific savings without resorting to as yet unknown proposals to fit within the cap.

In closing, the waiver raises more questions than it answers. It is unclear how the State will compensate for the shortfall of \$842 million in projected need, which could subject the State to huge financial pressures. The cap raises significant issues and you should not assume that the Centers for Medicare and Medicaid Services will support future proposals to cover the shortfall. Without a detailed plan, we cannot adequately evaluate the waiver or lend support.

Sincerely,



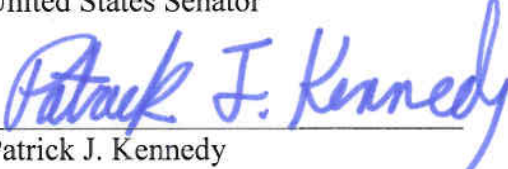
Jack Reed
United States Senator



Sheldon Whitehouse
United States Senator



Jim Langevin
Member of Congress



Patrick J. Kennedy
Member of Congress

cc: The Honorable Steven M. Costantino
Chairperson
House Finance Committee
The Rhode Island State House, Room 36
Providence, RI 02903

The Honorable Daniel DaPonte
Chairperson
Senate Finance Committee
116 Ivy Street
East Providence, RI 02914