

MAX BAUCUS, MONTANA, CHAIRMAN

JOHN D. ROCKEFELLER IV, WEST VIRGINIA  
TOM DASCHLE, SOUTH DAKOTA  
JOHN BREAUX, LOUISIANA  
KENT CONRAD, NORTH DAKOTA  
BOB GRAHAM, FLORIDA  
JAMES M. JEFFORDS (I), VERMONT  
JEFF BINGAMAN, NEW MEXICO  
JOHN F. KERRY, MASSACHUSETTS  
ROBERT G. TORRICELLI, NEW JERSEY  
BLANCHE L. LINCOLN, ARKANSAS

CHARLES E. GRASSLEY, IOWA  
ORRIN G. HATCH, UTAH  
FRANK H. MURKOWSKI, ALASKA  
DON NICKLES, OKLAHOMA  
PHIL GRAMM, TEXAS  
TRENT LOTT, MISSISSIPPI  
FRED THOMPSON, TENNESSEE  
OLYMPIA J. SNOWE, MAINE  
JON KYL, ARIZONA  
CRAIG THOMAS, WYOMING

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

JOHN ANGELL, STAFF DIRECTOR  
KOLAN DAVIS, REPUBLICAN STAFF DIRECTOR AND CHIEF COUNSEL

April 23, 2002

The Honorable Tommy G. Thompson  
Secretary  
Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Thompson:

On March 7, 2002, the Centers for Medicare and Medicaid Services (CMS) provided us with a portion of the information on Section 1115 Medicaid waivers that we had requested almost five months before. While we appreciate receiving the information, we remain disappointed that we have not received the monthly updates that we requested. Further, we have seen no response from you or officials at CMS regarding your plans to make this information available to the public. We hope that you will provide us with the additional information we have requested on a regular basis and that you will put the information on the Department's website.

As you know, consideration of statewide waiver applications implicates some of the most important issues facing health policymakers today, including questions about what is adequate health insurance coverage for low-income or disabled individuals, how population expansions should be financed in the context of State budget constraints, and what the federal government's role should be in setting minimum standards for Medicaid. Further, the types of documents that you have provided to us – waiver applications from States and waiver “approval packages” – have historically been considered public documents. To our knowledge, these kinds of documents have never been treated with the level of secrecy that has been imposed under your leadership at the Department. And finally, despite repeated questions on this subject from our staffs, no official in the Department has ever articulated a legal basis for withholding this information from Congress or the public. For all of these reasons, we believe that the material you provided to us and any additional waiver concept papers, waiver applications, and approval packages should be made available to the general public as soon as possible.

If you have concerns with making this information publicly available, or with our sharing this information, please let us know immediately. Please also let us know specifically what the basis of your concern is, whether you believe that the public could have access to this information under the Freedom of Information Act, and if not, the specific legal exemptions and legal reasoning underlying that determination. If we do not hear from you before May 7, 2002, we will assume that you do not have concerns with public disclosure of the information you have provided to us.

The Honorable Tommy G. Thompson  
April 23, 2002  
Page 2

Thank you for your attention to this very important matter. If you have any questions concerning this request, please do not hesitate to contact us or have your staff contact Andrea Cohen (224-4515) or Hope Cooper (224-5315).

Sincerely,



Charles E. Grassley  
Ranking Member



Max Baucus  
Chairman

cc: The Honorable Thomas R. Scully  
Administrator  
Centers for Medicare & Medicaid Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201