Summary of the Economic Recovery in Health Care Act of 2008

Senators Jay Rockefeller (D-WV), Olympia Snowe (R-ME), and Edward Kennedy (D-MA)

Background

Medicaid is a critical safety-net for working families. Medicaid is also the economic foundation of our health care infrastructure through its support of hospitals, doctors, community health centers, and nursing homes in every state throughout the nation. During the last economic downturn, the number of uninsured Americans would have been millions more if Medicaid and the State Children's Health Insurance Program (CHIP) had not responded to the twin challenges of an economic downturn and a sharp drop-off in private health insurance coverage.

According to the National Governors Association, the recent economic downturn has left 18 states with budget shortfalls totaling $14 million in 2008, and 21 states project shortfalls totaling more than $32 million in 2009. If the current downturn follows the path of most recessions, between 35 and 40 states will face severe budget shortfalls in 2009. By law, 49 states are required to balance their budgets and, in times of economic downturn, this task becomes significantly more difficult. Without help from the federal government, states will be forced to reduce spending, often by cutting Medicaid.

The administrative regulations recently proposed by the Administration would reduce federal Medicaid matching payments by approximately $18 billion over 5 years and $42 billion over 10 years according to the Congressional Budget Office. However, state reports to the House Oversight Committee indicate that the cost shift to states could be far greater. These administrative regulations would further aggravate the impact of the economic downturn on states and working families.

Preserving Access to Medicaid and CHIP During the Economic Slowdown

- **Extension of Existing Moratoria on Medicaid Regulations**

  Our bill will preserve access to Medicaid for seniors, pregnant women, individuals with disabilities, and children during the economic downturn by temporarily extending – through April 1, 2009 – the Medicaid moratoria that Congress has already enacted:

  Cost Limit for Public Providers Final Rule (72 Fed. Reg. 29748) – The proposed rule imposes new restrictions on payments to providers operated by units of governments. Final rule issued May 25 and published May 29, 2007. Congress acted to delay implementation for one year through Section 7002 of P.L. 110-28. However, the current moratorium expires May 25, 2008.

  Payments for Graduate Medical Education (GME) Proposed Rule (72 Fed. Reg. 28930) - The proposal would no longer allow Medicaid funding to be used for GME. Proposed rule published May 23, 2007. Congress acted to delay implementation for one year

through Section 7002 of P.L. 110-28. However, the current moratorium expires May 25, 2008[1].

Rehabilitative Services Proposed Rule (72 Fed. Reg. 45201) – This proposed rule would prohibit federal matching funds for rehabilitative services furnished through a non-medical program (e.g., foster care, adoption services, education, juvenile justice). Proposed rule issued August 13, 2007. Congress acted to delay implementation for one year through Section 206 of P.L. 110-173. However, the current moratorium expires June 30, 2008.

Payments for Costs of School Administration, Transportation Final Rule (72 Fed. Reg. 73635) – This rule eliminates longstanding federal policy by prohibiting federal matching funds for (1) administrative activities by school employees or contractors and (2) transportation of school-aged children from home to school and back. Final rule issued December 28, 2007. Congress acted to delay implementation for one year through Section 206 of P.L. 110-173. However, the current moratorium expires June 30, 2008.

- **Additional Moratoria on Medicaid Regulations and CHIP Guidance**

The Economic Recovery in Health Care Act would also preserve access to Medicaid by delaying – through April 1, 2009 – implementation of the following additional Medicaid regulations, which are already in effect or scheduled to go into effect in the near future:

Optional Case Management Services Interim Final Rule (72 Fed. Reg. 68077) – This rule narrows Medicaid payment policy for covered case management services – referred to as Optional State Plan Case Management Services or, more commonly, Targeted Case Management (TCM). Interim final rule issued December 4, 2007. Effective March 3, 2008. The Senate voted to adopt an amendment to the Indian Health Care Improvement Act Amendments of 2007 (S.1200) that delays implementation of this regulation until April 1, 2009.

Allowable Provider Taxes Final Rule (73 Fed. Reg. 9685) – The regulation imposes more stringent language in applying the hold harmless test and affords CMS broad flexibility in identifying relationships between provider taxes and Medicaid payments. Final rule issued February 22, 2008. Effective April 22, 2008.

Revised Outpatient Clinic and Hospital Services Proposed Rule (72 Fed. Reg. 55158) - CMS seeks to limit the funding that states pay for outpatient visits to hospitals and clinics by restricting costs, including GME, that can be counted in the upper payment limit, which is the maximum a state can pay for these services. Proposed rule published September 28, 2007.

Departmental Appeals Board (DAB) Proposed Rule (72 Fed. Reg. 73708) – This rule would allow the Secretary of HHS to overturn or remand independent Board decisions on

[1] The legislative language relative to the GME provision appears separately from language on existing moratoria because there are differing opinions about whether the current moratorium fully addresses all the provisions in the GME proposed rule.

Medicaid, TANF and Head Start; exclusions from federal health care programs; civil penalties on Medicare Advantage or Prescription Drug Plans under Medicare Parts C or D; and decisions on whether providers meet conditions of participation in Medicare or Medicaid. Proposed rule published December 28, 2007.

Our bill would also preserve access to CHIP for low-income children by implementing a one-year moratorium on the August 17 CHIP guidance.

- **Targeted Countercyclical Funding to States**

The Economic Recovery in Health Care Act would also provide countercyclical funding to states that is timely, temporary and targeted. Leading economists have found that targeted state aid would generate increased economic activity of $1.36 for each dollar of cost. Our legislation provides approximately $12 billion in targeted state fiscal relief, equally divided between an increase in federal Medicaid matching payments and targeted grants to states.

In order to qualify for an increase in federal matching payments and the targeted grants, each state must meet certain criteria. The criteria would be based on the average of state ranks in the following:

1. **Reduction in employment.** (Year-to-Year based on latest Bureau of Labor Statistics Current Employer Statistics Survey)

2. **Increase in food stamps participation.** (Year-to-Year based on average of monthly participation according to most recent USDA Food and Nutrition Service Data)

3. **Increase in the foreclosure rate.** (Year-to-Year based on most recent Mortgage Bankers National Delinquency Survey, as published in "Recent Foreclosure Trends Report for all States")

There will be two rounds of targeted relief – Round One and Round Two. States that qualify will continue to be qualified throughout the period of fiscal relief. For states that qualify for Round One, that period is April 1, 2008 – June 30, 2009. States newly qualifying after April 1, 2008 will begin receiving state fiscal relief payments in Round Two, which begins in the first quarter of federal fiscal year 2009 (October 1, 2008) and lasts through June 30, 2009.