Congress of the United States
Washington, DC 20515

January 13, 2012

The Honorable Kathleen Sebelius
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

We write to express our concerns with respect to your department's release of the essential health benefits "bulletin."

The Administration has claimed that "President Obama has committed to making his administration the most open and transparent in history," however, the actions taken by your department in implementing provisions of the new health care law, and most recently the essential health benefits "bulletin," do not comport with this claim.

By issuing a "bulletin" rather than a proposed rule, the Administration has sidestepped the requirement to publish a cost benefit analysis estimating the impact these mandates will have on health insurance premiums and the increased costs to the federal government. Additionally, the Administration has avoided publishing a list of unfunded mandates on states and the private sector by issuing a "bulletin" rather than a proposed rule, and has also avoided publishing a list of regulatory alternatives. Finally, the Administration is not required to respond to comments received regarding this "bulletin." Publishing a "bulletin" rather than a proposed rule is the antithesis of an "open and transparent" process.

As states struggle to balance their budgets, they are forced to closely track the regulations published by this Administration implementing the new health care law. The essential health benefits regulation has the potential to significantly increase health insurance premiums and state expenditures on health care, and states seek the clarification of a proposed rule on essential health benefits in advance of the 2012 legislative sessions.

The bulletin also does not have the force of law and cannot, therefore, be considered an indication of what the proposed or final rule will decree. Thus, states still have many unanswered questions and no more certainty than they had before the "bulletin" was released. Such indecision does little, if anything, to allow states to plan for the burdensome regulations that your Department will undoubtedly publish on this topic prior to 2014. It is unreasonable to expect states to be ready to implement such draconian changes by 2014, if the Administration is not even ready to issue a proposed rule on such an integral part of the functioning of the law.

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Another example of this aforementioned lack of transparency pertains to publishing this "bulletin" on the Friday before the holidays, and pursuing a public relations campaign that included selectively scheduled conference calls with lobbyists and special interest groups three hours prior to briefing Congress.

Given the fact that the new health care law mandates every new plan sold to individuals and small businesses in 2014 and beyond must include the essential health benefits as defined by the Secretary of the Department of Health and Human Services, we ask you to provide us with the following information by January 27, 2012:

(1) The legal basis and rationale for pursuing a "bulletin" rather than a proposed rule;
(2) Information documenting the instances over the last 20 years when an agency pursued this type of action prior to publishing a proposed or final rule pertaining to the subject of the "bulletin";
(3) A cost benefit analysis of the "bulletin," including an accounting statement showing the Department's assessment of the benefits, costs, and transfers associated with this regulatory action, as well as the economic impact analysis associated with this "bulletin";
(4) All documents, emails, and data pertaining to the cost benefit analysis and the economic impact analysis of implementing the essential health benefits "bulletin," including any unfunded mandates on the states and the private sector and any regulatory alternatives considered by the Administration; and,
(5) A commitment that Administration staff will in the future brief Congress before briefing lobbyists and special interest groups on important issues relating to implementation of the health care law.

We look forward to receiving your response.

Respectfully,

MICHAEL B. ENZI
Ranking Member
Senate HELP Committee

ORRIN G. HATCH
Ranking Member
Senate Finance Committee

DAVE CAMP
Chairman
House Ways and Means Committee

FRED UPTON
Chairman
House Energy and Commerce Committee

JOHN KLINE
Chairman
House Education and Workforce Committee