

1 **COMMITTEE: HEALTH AND HUMAN SERVICES**

2 **POLICY: GENERAL GUIDING PRINCIPLES: FEDERALISM AND**
3 **HEALTH PROGRAMS**

4 **TYPE:**

5
6 The partnership between the states and the federal government on health care is
7 complicated, yet critically important. The underlying goal should be to achieve mutually
8 agreed upon goals that produce improved outcomes and achieve program efficiencies
9 and savings for federal, state and local governments. It is equally important that the
10 basic tenets of federalism carry throughout the partnership. NCSL urges Congress and
11 the Administration to avoid: (1) the imposition of unnecessary uniform standards; (2)
12 unfunded mandates in discretionary and entitlement programs and cost-shifting; (3)
13 restricting state taxing authority and other means of generating revenue; and (4)
14 preemption of state laws and regulations, unless there is a compelling national goal that
15 cannot be achieved another way. NCSL also urges the Congress and the Administration
16 to seek the counsel and expertise of state legislators as key health care initiatives are
17 being developed. It is particularly important that state agencies take the state
18 consultation requirement seriously when implementing health care programs. It is
19 equally important that the agencies consider and detail the impact of federal regulations
20 on state governments. Finally, we strongly urge the Congress, when drafting legislation,
21 and the Administration, when implementing laws, respect the state budget and
22 legislative process and provide adequate time for states to comply with federal
23 requirements.

24 **FUNDING**

25 In these challenging times, it is still important to provide stable and adequate funding
26 for priority health programs and to increase state flexibility and reduce program
27 requirements when sufficient funding is not available. Every effort should be made to

28 fund programs in a way that is equitable across the states, but also recognizing and
29 addressing the different circumstances among the states and the varying needs of their
30 constituents. In discretionary block grant programs, NCSL urges Congress to avoid
31 imposing set-asides within the block grant. Each new set-aside decreases state
32 flexibility. NCSL supports accountability and transparency and welcomes public
33 feedback and participation. NCSL supports a strong role for state legislatures in
34 program oversight and urges the federal government to give states the flexibility with
35 regard to public notice and the solicitation of public input related to program proposals,
36 program design and benefits, administration and implementation. Too often, legacy
37 states, innovative states that take the first step on a new approach, are disadvantaged
38 when federal programs mirroring their own are enacted. These states should receive
39 special consideration and not be penalized for being innovative.

40 **MEDICAID FUNDING**

41 NCSL strongly opposes proposals to reduce or cap federal matching funds provided to
42 states for Medicaid services, provider reimbursement or program administration.
43 Proposals to cap the Medicaid program fundamentally change the relationship between
44 the states and the federal government by inappropriately transforming a full partnership
45 into a limited partnership, and shifting both costs and responsibility to state
46 governments without adequate authority to manage costs.
47 NCSL urges the Administration to continue and to expand state flexibility in the
48 Medicaid program through demonstration programs and 1115 waivers. Successful
49 demonstration and waiver programs should be replicated. NCSL urges the
50 Administration to permit bold, innovative programs to be tested and to provide technical
51 support to states as needed.

- 52 ▪ **Emergency Assistance and Countercyclical Assistance** - NCSL urges the
53 Congress to study options to include a provision establishing emergency and
54 countercyclical assistance to states within the Medicaid statute. The provision would
55 upon some triggering event, such as an economic downturn, natural disaster, act of
56 terrorism, pandemic or other public health emergency, provide additional financial
57 assistance to states through an enhanced federal match or some other mechanism

58 that would revert back to the regular federal-state cost sharing formula when the
59 triggering event has been resolved. This is a complex, but critical component to
60 fiscal security for the Medicaid program. NCSL looks forward to working with
61 Congress and the Administration to identify options and to establish and implement
62 a program.

63 **STATE IMPLEMENTATION OF FEDERAL HEALTH PROGRAMS**

64 ▪ State Sovereignty – When federal law requires a declaration be made on the part
65 of the state, the law should simply require “the state” to take the action and allow the
66 state to determine the appropriate state entity to fulfill the requirement. Alternatively,
67 when a federal agency implements the law, the agency should also let the state
68 determine the appropriate entity or individual instead of making its own
69 determination.

70 ▪ State Flexibility – States should be afforded maximum flexibility when
71 implementing federal programs. This flexibility must be accompanied by
72 accountability and transparency on the part of states. Unnecessary uniformity
73 compromises the effectiveness of programs by making it impossible for states to
74 respond to local conditions.

75 Reporting Requirements and Data Collection – Reporting requirements are
76 important, but should be limited to requirements where there is a
77 reasonable expectation that the data will be used to further program goals.
78 In addition, efforts must be made to impose data collection and reporting
79 requirements in the least burdensome way possible.

80 **JUDICIAL REFORMS**

81 State Medicaid dollars are increasingly tied up in costly federal litigation. NCSL urges
82 the Administration and the Congress to work with state officials on developing strategies
83 to reduce the volume of litigation by clarifying and simplifying Medicaid statutory
84 provisions that are too vague or too prescriptive for states to properly administer. NCSL
85 also urges the U.S. Department of Health and Human Services to provide technical

86 assistance to states regarding Medicaid services/issues that are the subject of litigation
87 in several states so that states may find ways to successfully provide the services in
88 question without litigation.

89 ▪ **Federal Consent Decrees: Impact on Medicaid** - Civil lawsuits filed against
90 public schools, transit systems, and other state and local government agencies often
91 result in consent decrees. Consent decrees can remain in place for decades, locking
92 in policies that were agreed to by officials who are no longer in office, reflecting
93 concerns no longer relevant to the current times and imposing requirements on
94 states that do not meet the current needs of their citizens. Under current law, it is
95 extremely difficult for states to vacate or modify the terms of these consent decrees
96 which means policymakers are hobbled in their ability to govern responsibly. NCSL
97 supports federal legislation that allows for periodic reexamination of consent decrees
98 to which the state is a party, other than consent decrees addressing school
99 desegregation or other actions brought under Titles VI or VII of the Civil Rights Act of
100 1964, upon motion of the state and which would make it easier for states to vacate
101 or modify consent decrees as current state circumstances may require.