

The National Association of Community Health Centers, Inc.

**MODEL State Legislation to Implement State Flexibility in Medicaid:
Appropriations Riders**

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The Deficit Reduction Act (DRA, Pub. L. 109-362) gives states new flexibility to define the concept of “medical assistance” in the case of low income children and their parents and require premiums and cost sharing. The power to define “medical assistance” is critical, since the definition determines what is covered under a state plan. (For example, FQHC services are a form of “medical assistance.”).

In February, NACHC distributed “model” State legislation, whose purpose is to ensure a central role for state legislatures in designing and implementing changes in benefits and coverage, as well as premiums and cost sharing. The model is intended for use in both states that administer their programs under an approved Medicaid plan, as well as states that administer their programs in part or in whole as a Section 1115 demonstration, with waivers of normal state requirements from the HHS Secretary. <http://www.nachc.com/advocacy/Files/state-policy/model%20state%20legislation.pdf>

Among other matters, the model legislation details specific procedures a state agency must follow in informing the legislature of its intent to seek changes, as well as specific information and analyses that it must provide lawmakers, before changes can be made and federal approval sought. The fundamental goal of the reform proposal is to bring transparency to the process of state Medicaid program decision making.

However, passage of such a detailed and demanding bill may be very difficult, particularly in the waning weeks or days of a state legislative session. As a result, we have prepared and list below some fairly simple and straightforward provisions that might be added as “riders” to a state appropriations bill, particularly a bill that appropriates funds for the State’s Medicaid program. As with our earlier State models, the language below is necessarily generic, since each state has its own conventions for statutory drafting

I. Amendments to State Medicaid plan:

No funds from these appropriations shall be spent to implement amendments to [NAME of STATE] plan for medical assistance, which have been approved pursuant to Sections 1916A, 1937, or 1938 of Title XIX of the Social Security Act, as added by Sections 6044, 6041, or 6082 of the Deficit Reduction Act of 2005 (Pub L. 109-362) unless the [Legislative body or each of the appropriate Committees of jurisdiction] has approved such changes by majority vote.

II State operating its Medicaid program in whole or in part under Section 1115 of the SSA

No funds from these appropriations shall be spent to implement approved modifications of [NAME STATE DEMONSTRATION] related to benefits, coverage, premiums and cost sharing unless the [Legislative body or each of the appropriate Committees of jurisdiction] has approved such changes by majority vote.

OR

I. Amendments to State Medicaid plan

No funds from these appropriations shall be spent to implement any state plan amendments to the [State Medicaid Program] that modify, directly or indirectly, medical assistance covered under the State plan pursuant to Sections 1902 and 1905 of such Act or premiums and cost sharing under the State plan pursuant to Section 1916 of such Act, unless [the Legislative body or each of the appropriate Committees of jurisdiction] have received notice of such changes, have had an opportunity to review such changes, and have approved such changes by majority vote.

II. State operating its Medicaid program in whole or in part under Section 1115 of the SSA

No funds from these appropriations shall be spent to implement any changes approved by the Secretary of the U.S. Department of Health and Human Services pursuant to a waiver under Section 1115 of the Social Security Act that modify, directly or indirectly, medical assistance covered under the state plan pursuant to Sections 1902 and 1905 of such Act or premiums and cost sharing under the State plan pursuant to Section 1916 of such Act, unless [the Legislative body or each of the appropriate Committees of jurisdiction] have received notice of such changes, have had an opportunity to review such changes, and have approved such changes by majority vote