



NORTH CAROLINA GENERAL ASSEMBLY

PRESIDENT PRO TEMPORE
PHIL BERGER

SPEAKER OF THE HOUSE
TIM MOORE

RALEIGH 27601

January 5, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable Andrew M. Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
200 Independence Ave., S.W.
Washington, D.C. 20201

Dear Mr. Slavitt,

Yesterday, Governor Roy Cooper publicly announced his intention to submit a State Plan Amendment to expand Medicaid under the Affordable Care Act to the Centers for Medicare and Medicaid Services (CMS) by Friday, January 6, 2017. We are disappointed by this news, as such action is clearly prohibited under state law, and encourage CMS to decline the Governor's illegal request for expansion.

Section 3 of Session Law 2013-5, effective March 6, 2013, states: "The State will not expand the State's Medicaid eligibility under the Medicaid expansion provided in the Affordable Care Act, P.L. 111-148, as amended, for which the enforcement was ruled unconstitutional by the *U.S. Supreme Court in National Federation of Independent Business, et al. v. Sebelius, Secretary of Health and Human Services, et al.*, 132 S. Ct. 2566 (2012). No department, agency, or institution of this State shall attempt to expand the Medicaid eligibility standards provided in S.L. 2011-145, as amended, or elsewhere in State law, unless directed to do so by the General Assembly."

G.S. 108A-54(f), effective September 23, 2015, as provided in Section 13 of Session Law 2015-245, states: "The General Assembly shall determine the eligibility categories and income thresholds for the Medicaid and NC Health Choice programs."

G.S. 108A-54(e), as amended effective June 1, 2016, pursuant to Section 2(h) of Session Law 2016-121, states: "Prior to and following the exchange of powers and duties from the Division of Medical Assistance to the Division of Health Benefits, and in addition to the powers and duties already vested in the Secretary of the Department of Health and Human Services, the Secretary of the Department of Health and Human Services, through the Division of Health Benefits, Services shall have the following powers and duties: ... (4) Establish and adjust all program components, except for eligibility categories and income thresholds, of the Medicaid and NC Health Choice programs within the

appropriated and allocated budget.” This statute also indicates that DHHS’s power to “administer and operate the Medicaid and NC Health Choice programs” is “provided that the total expenditures, net of agency receipts, do not exceed the authorized budget for the Medicaid program and NC Health Choice program.”

The **North Carolina Constitution** expressly reserves all taxing authority and appropriations responsibility for the General Assembly. **Article II, Section 23** states, “No law shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal. **Article V, Section 7** states, “No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.”

Clearly, Governor Cooper does not have the legal authority to submit this State Plan Amendment to expand Medicaid. Additionally, the most recent estimate shows Medicaid expansion would require a state commitment of roughly \$600 million each year, which would represent a significant increase to the Medicaid budget. Even if the governor had the authority to submit the amendment, such a decision should not be made unilaterally without the consultation of the legislature.

For these reasons, and since Governor Cooper has unfortunately chosen to defy the law, we respectfully request CMS reject this amendment.

Sincerely,



Phil Berger, President Pro Tempore
North Carolina Senate



Tim Moore, Speaker
North Carolina House of Representatives

cc: Richard Burr, Senator (NC)
Thom Tillis, Senator (NC)
George “G.K.” Butterfield, Jr., Representative (NC - 1st District)
George Holding, Representative (NC - 2nd District)
Walter Jones Jr., Representative (NC - 3rd District)
David Price, Representative (NC - 4th District)
Virginia Foxx, Representative (NC - 5th District)
Mark Walker, Representative (NC - 6th District)
David Rouzer, Representative (NC - 7th District)
Richard Hudson, Representative (NC - 8th District)
Robert Pittenger, Representative (NC - 9th District)
Patrick McHenry, Representative (NC - 10th District)
Mark Meadows, Representative (NC - 11th District)
Alma Adams, Representative (NC - 12th District)
Ted Budd, Representative (NC - 13th District)