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STATE OF ALABAMA

December 24, 2009

The Honorable Troy King
Attorney General
State of Alabama
500 Dexter Avenue
Montgomery, AL 36130-0152

Dear Attorney General King:

As you know, at 7 a.m. Eastern time this morning, the United States Senate passed a bill that would affect a massive government overhaul of the nation's health care system. A congressional news publication is calling the bill "the largest expansion of the government's role in social policy since Lyndon B. Johnson's Great Society programs."¹

As you are also aware, suspicious backroom deals were apparently cut to win enough Democrats' votes to secure the bill's passage. In short, it appears that the Democratic senators from at least Nebraska and Louisiana were promised hundreds of millions in additional federal funding for their states' Medicaid programs, to be subsidized by taxpayers in Alabama and other states. Nobody in the Senate has read this colossal bill, and nobody could possibly know everything that is in it. But after my conversations with other governors, our congressional delegation, and Alabama's Medicaid commissioner, I am very alarmed by the negative possibilities that Alabama is almost certain to be faced with as a result of this underhanded deal-making. It would appear that the Democratic leadership in the Senate bought the votes of a few Democratic senators with the taxes paid by Alabama citizens.

As you have joined with a coalition of attorneys general forming across the country to investigate this matter, I am recommending you employ any and all resources at your disposal to facilitate an immediate, legitimate, and credible response to determine whether there has been a breach of constitutional authority. Since these questionable deals favor a few states while threatening the very viability of Alabama's Medicaid program, I have instructed Medicaid Commissioner Carol Steckel to make the full resources of her office available to you as you move forward.

Alabama, in particular, has a right to be outraged by these events. Over the past few months, we have been working diligently in good faith with the Centers for Medicare and Medicaid Services (CMS) to resolve our long-standing dispute over the financing of Alabama's Medicaid program for hospitals. Before we began this round of negotiations, CMS had determined that Alabama's potential exposure could be as high as \$270 million for past years. Additionally, CMS had insisted that Alabama adopt a state plan that would result in the loss of hundreds of millions of federal dollars for Medicaid going forward. Meanwhile, both the U.S. House of Representatives and the U.S. Senate have passed legislation that would mandate an unprecedented expansion of Alabama Medicaid, increasing the number of Medicaid eligibles by 50 percent at a total cost of \$1.4 billion. This appalling unfunded mandate simply could not be accomplished without raising taxes on the people of Alabama.

¹ - "Senate passes historic health care overhaul," Congressional Quarterly, CQ.com, December 24, 2009.
<http://www.cq.com/document/display.do?docid=3273233&sourcetype=6>

It is one thing for Democrats in Washington, DC, to claim they're enacting health care reform by saddling the people of Alabama with the enormous cost of a federally-mandated expansion of Alabama's Medicaid program. It is absolutely unconscionable that they would now saddle Alabamians with the cost of Nebraska's and Louisiana's Medicaid expansion, too.

Nevertheless, until we know what the final version of health care reform will entail, I am committed to continuing our positive negotiations with CMS to protect the sustainability of Alabama Medicaid as a health care safety-net for the most vulnerable Alabamians. However, your investigation into the deals cut for certain U.S. Senators could be of tremendous help.

At the heart of our dispute with CMS is how public hospitals in Alabama define, calculate, and certify uncompensated-care costs ("Certified Public Expenditures" or CPEs) for the purpose of drawing down federal matching dollars. CMS has insisted on a very narrow definition of costs for CPEs, which obviously reduces Alabama's share of federal funds. For example, CMS has said that it will not allow Alabama hospitals to claim CPEs for:

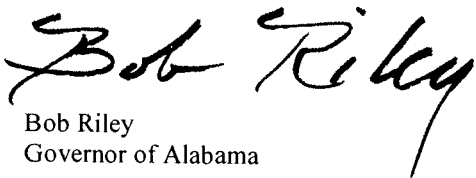
- the inpatient cost of physician services;
- the uncompensated care costs for the under-insured (those that have policies that only pay a very minimal amount toward the actual costs of their hospital stays);
- the indirect costs attributed to the services provided to all inpatients such as telephone services and television services;
- the costs attributed to interest expenses; among others.

We have asked for the details of other states' cost methodologies approved by CMS, but for whatever reason, the details of other states' approved plans seem to be very elusive. Throughout its history, CMS has garnered a reputation among the states for a practice of approving disparate cost methodologies from state to state on a wink and a handshake. In addition, CMS is enforcing a regulation retroactively against Alabama and requiring data collection that did not exist and was not required until the publication of the Disproportionate Share Regulation (DSH) last December.

Therefore, I am requesting that you expand your investigation to include not only deals that may have been cut regarding provisions in this legislation, but also any other deals or arrangements with this Administration that alleviate, in any way, a particular state's burden to provide financing for any federal program in order to secure the votes needed to pass this legislation.

Again, thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Bob Riley". The signature is written in a cursive, flowing style.

Bob Riley
Governor of Alabama

BR/mm/bk