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May 17, 2017

Senator Orrin Hatch
Chair, Senate Finance
Committee
104 Hart Office Building
Washington, D.C. 20510

Senator Ron Wyden
Ranking Member, Senate Finance
Committee
221 Dirksen Senate Office Building
Washington, D.C. 20510

Senate Finance Committee
219 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Letter to Senate Finance Committee re: Recovering State Contributions in Medicare Part D Settlements

Dear Senators Hatch and Wyden:

We write to you as state Attorneys General to address an important issue impacting the state Medicaid programs. Over the past decade the states have contributed approximately \$80 billion dollars in monthly “clawback” payments to the Medicare Part D prescription drug benefit program. In 2017 alone, those clawback payments are expected to rise to over \$11 billion. And over the past decade the Federal government has received, and continues to receive, millions of dollars in recoveries for fraud and overpayment cases involving Part D drugs. However, despite the states’ considerable—and growing—financial contributions to the Part D program, the states have not received a single dollar of those recoveries. We request your assistance in addressing this inequity and recommend federal legislation that would allow the Federal government to return a proportionate share of all Part D recoveries to the states.

Before January 1, 2006, state Medicaid programs paid directly for outpatient prescription drug benefits for dual eligible beneficiaries (individuals covered by both Medicare and Medicaid). Because Medicaid is jointly funded, those payments included both federal and state dollars via the Federal and State Medical Assistance Percentages (“FMAP/SMAP”). If a state received a Medicaid recovery, it would share that recovery by remitting the FMAP portion of that recovery to the Federal government.

As of January 1, 2006, under Part D in the Medicare Prescription Drug, Improvement, and Modernization Act (Part D), Medicare now pays directly for these Part D drugs. However, the states still share in those costs through substantial monthly “clawback” payments. In other words, even though the cost-sharing structure changed with the advent of Part D, the Federal government and states have continued to jointly fund dual eligible beneficiaries’ outpatient prescription drugs.

Over the past decade, the Federal government has settled numerous national healthcare cases and has recovered hundreds of millions of dollars in Part D funding, but has never returned any of these funds to the states. The

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Federal government has taken the position (as indicated in discussion with U.S. DOJ) that it is prevented from returning any of these recoveries to the states because of the Miscellaneous Receipts Act, 31 U.S.C. § 3302(b) (“MRA”), which requires that any money received “for the Government” from any source be deposited into the United States Treasury unless Congress has specifically authorized the agency to retain such money. However, the purpose of the MRA is to prevent executive agencies from augmenting their own appropriations – which would not be the case when returning Part D recoveries to the very same state Medicaid programs that, along with the Federal government, fund the prescription drug expenditures at issue. A specific statute authorizing the Federal government to share recoveries with the states is appropriate here as a matter of equity and fundamental fairness, returning the states and Federal government to the reciprocal sharing of dual eligible beneficiary recoveries that existed prior to 2006.

We therefore strongly urge you to consider appropriate legislation authorizing the Federal government to return an equitable share of Part D recoveries to the states.

Respectfully submitted,



Josh Stein
North Carolina Attorney General



Mike DeWine
Ohio Attorney General



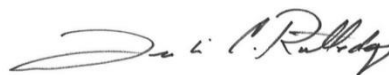
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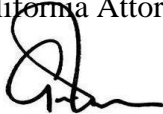
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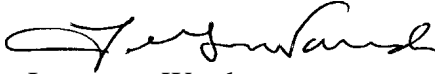
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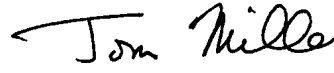
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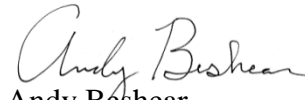
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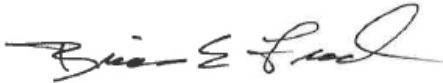
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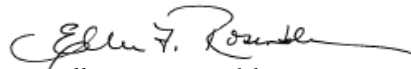
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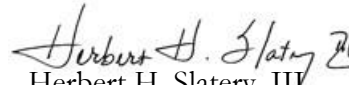
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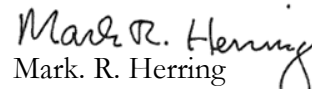
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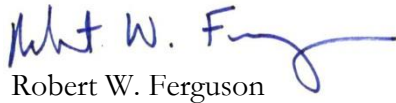
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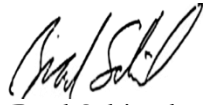
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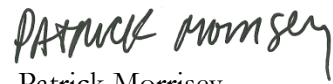
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