OPEN EXECUTIVE SESSION TO CONSIDER THE NOMINATIONS
OF ANDREA JOAN PALM, TO BE DEPUTY SECRETARY, DEPARTMENT
OF HEALTH AND HUMAN SERVICES; AND CHIQUITA
BROOKS-LASURE, TO BE ADMINISTRATOR, CENTERS FOR MEDICARE
AND MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN
SERVICES
THURSDAY, APRIL 22, 2021
U.S. Senate,
Committee on Finance,
Washington, DC.

The meeting was convened, pursuant to notice, at
9:30 a.m., via WebEx, Hon. Ron Wyden (chairman of the
committee) presiding.

Present: Senators Stabenow, Cantwell, Menendez,
Carper, Cardin, Brown, Bennet, Casey, Warner,
Whitehouse, Hassan, Cortez Masto, Warren, Crapo,
Grassley, Cornyn, Thune, Lankford, Daines, Young, and
Barrasso.

Also present: Democratic staff: Michael Evans,
Deputy Staff Director and Chief Counsel; Ian Nicholson,
Investigator and Nominations Advisor; and Joshua
Sheinkman, Staff Director. Republican staff: Gregg
Richard, Staff Director; Kellie McConnell, Health
Policy Director; and Stuart Portman, Senior Health
Policy Advisor.
OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM OREGON, CHAIRMAN, COMMITTEE ON FINANCE

The Chairman. This morning, the committee is going to take up two matters. First, we will hold a business meeting considering the nominations of Andrea Palm and Chiquita Brooks-LaSure.

Folks, could we just have some quiet? Members are so busy this morning, I just would like everybody to understand how we are going to move ahead.

First, I will hold a business meeting considering the nominations of Andrea Palm and Chiquita Brooks-LaSure, to be, respectively, Deputy Secretary of Health and Human Services, and Administrator of the Centers for Medicare and Medicaid Services.

Second, when the votes on the nominations have concluded, we will adjourn the business meeting and convene a virtual hearing to consider issues relating to the U.S.-China Trade Policy.

It is a very busy morning, as many members of the committee have told me, because so many committees are conducting business. To assure that we have a quorum, and can have a vote on the nominations at 9:45, assuming a quorum is present, I urge staff to alert senators to be present at 9:45. Unless Ranking Member Crapo has any
comments now, I will just make a very quick introductory statement, and then I think our friend, Senator Crapo, has a similar quick introductory statement, and then it is our understanding that our colleague from Texas, Senator Cornyn, will speak after Senator Crapo. And once a quorum is present, then we will be able to proceed.

Colleagues, I think these two nominees have impeccable qualifications. Chiquita Brooks-LaSure is President Biden's nominee to serve as Administrator for the Centers on Medicare and Medicaid Services.

She knows America's federal health programs inside out. She has worked on expanding access and bringing down costs in Medicare and Medicaid. She helped write the Affordable Care Act while on the staff of the Ways and Means Committee, and she worked on the Affordable Care Act's implementation at Health and Human Services during the Obama Administration. She also worked at the Office of Management and Budget, in the private sector, and I would like to highlight: She repeatedly says in her testimony that she understood the importance of working with all the members of this committee, underlining "all the members" of the committee.

Andrea Palm is President Biden's nominee to serve as Deputy Secretary of Health and Human Services. She
knows exactly what it takes to run this department that is so essential to the wellbeing of the American people. She previously served as the department's chief of staff and senior counselor to the Secretary during the Obama Administration, and she also led the Wisconsin Department of Health and Human Services, and her efforts to combat the COVID-19 pandemic are especially relevant to this committee.

Let's turn now to Ranking Member Crapo.
OPENING STATEMENT OF HON. MIKE CRAPO, A U.S. SENATOR FROM IDAHO

Senator Crapo. Thank you, Mr. Chairman. Following last Thursday's hearing, I had a favorable impression of Ms. Palm and Ms. Brooks-LaSure, the Biden Administration's nominees for HHS Deputy Secretary and CMS Administrator.

While I would not necessarily expect to agree with the nominees of a Democratic administration on every issue, they seem very willing to work with the states, with my senate colleagues, and with me on important health care matters.

Health care is one of the many policy areas where the states and the Federal Government have unique insights and responsibilities. These roles require close partnerships based on mutual trust between the states and the Federal Government.

In any area of public policy, sudden shifts and the uncertainty these shifts create can disrupt and fracture long-standing partnerships. Moreover, in health care policy the consequence of such sudden shifts can be dire, especially in the midst of a pandemic.

For this reason, there is an established precedent that new administrations cannot revoke waivers granted
by their predecessors. Last Thursday I asked Ms. Brooks-LaSure whether she believed that revoking approved Medicaid waivers, or portions of approved Medicaid waivers, immediately following an election sends the wrong message to the states.

Ms. Brooks-LaSure replied that she does a great deal of work with the states, and that she understands how much they would want certainty from the Federal Government. She went on to say: If confirmed, I will really work to make sure the states understand decisions and are part of the decision making process.

The next day, CMS revoked Texas's Medicaid 11-15 waiver without warning. I will let my colleague, Senator Cornyn, explain what this means for Texas. More generally, this sudden policy shift on the heels of other partial waivers sew significant mistrust between the states and the Federal Government, and could kill cooperation across a range of policy issues.

I am deeply concerned that the Biden Administration would take such a step with regard to Texas. It is particularly --

[Phone interruption.]

Senator Crapo. I am particularly -- it is particularly confusing that the Administration would do this now, when nominees are before this committee and
are seeking the advice and consent of the Senate.

The timing of the decision and the widespread reports that this action was part of a broader strategy to incent states to expand coverage through different means are discouraging and raise serious questions about the Administration's commitment to engagement with the states.

Unfortunately, after CMS actions on Friday, I cannot vote in favor of Ms. Brooks-LaSure. I am voting in favor of Ms. Palm because she has promised to work with Congress in developing and implementing HHS's policies.

Thank you, Mr. Chairman, I yield the remaining time.

The Chairman. I thank my colleague. Just a quick word on waivers before we go to the Senator from Texas.

At the hearing, both of the initial questions from me and from Senator Crapo were on waivers, because we understand the importance of letting states innovate. I think my colleagues know I am the author of Section 1332, the principal innovation waiver, which sends a strong message to states. If you are progressive and you want to look at public options, you want to aggregate Medicare and Medicaid money because you feel strongly about moving to single payer, you can do it.

If you are a conservative state, you have got the same running room. You have got the same thing as long
So, I know that my colleague from Texas is troubled about the Texas situation, as I indicated to him when we were talking. We are going to recognize him for his remarks, and I want him to know that after we move ahead, because it is critically important that we move ahead on these nominations today, he has a pledge from me personally, as the author of the principal waiver approach, to work closely with him and the Administration to see if we can find some common ground.

The Senator from Texas.
Senator Cornyn. Well, Mr. Chairman, I am more than troubled by this. This is a sucker punch by the Administration against the most vulnerable population in Texas covered by Medicaid. And because the Administration did not reach out to us, or warn us, or engage us, and frankly has been very difficult to engage in a conversation to understand and explain why they did this, and to figure out how to make it right, I would like to ask the Chairman to postpone the vote on Ms. Brooks-LaSure to give me time to talk to the White House Chief of Staff who has offered to talk to me about this.

My inclination, like Senator Crapo, the ranking member, is to vote for Ms. Brooks-LaSure. She did not have any part of this, and she -- but she now finds herself caught in the crosshairs of this controversy, which was entirely of the Administration's making.

But the Center for Medicare and Medicaid Services plays, as you know, a vital role in providing health care for the most vulnerable populations in the country. More than four million of my constituents, including half of all children in the state, depend on the stability of the state's Medicaid Program to provide
health care for themselves and their families.

Unfortunately, as I said, this recent unannounced and surprise move by the Biden Administration has put our entire health care system in jeopardy.

Mr. Chairman, I am advised that this is the first time in history, the first time, that a subsequent Administration has rescinded a previous Administration's grant of a waiver. So this is unprecedented.

As Senator Crapo said, last Friday the Administration rescinded approval of our 1115 waiver extension. Now that sounds pretty bureaucratic, but here is the short of it. The Biden Administration reversed the decision by the previous Administration that enabled billions of dollars to flow to Texans in need so we can provide for the most vulnerable population.

In sum, the Biden Administration is simply pulling the rug out from under those vulnerable Texans. This action undermines the safety net and the ability of hospitals to provide quality care to its Medicaid and uninsured patients. This does not just put the health care of Texas families at risk, it threatens our whole health care system, which is already on fragile footing.

Hospitals and providers in the state have been pushed to the brink by COVID-19. And this action robs
hospitals of the ability to plan ahead for their financial stability and uncompensated care costs. And it directly threatens care for uninsured patients.

It is not hyperbole to say that there are life and death consequences to this decision. So, what was the Administration's reasoning? The official answer from CMS was "to correct an administrative error." But two federal health officials did something unusual in Washington, DC, albeit anonymously, they told the truth. They told The Washington Post that this was done to push state officials toward accepting the Affordable Care Act's Medicaid expansion.

Well, it is pretty bold to admit that this is not about an administrative error at all, it is about pushing the state into a decision that the elected officials there have chosen not to make. The Administration clearly does not have the authority to do this by themselves, so they are playing a high-stakes game of chicken with the health care of our most vulnerable.

And this is not just about my state. If they can do this to any state represented here in the room, they can do it to North Carolina, they can do it to Iowa, they can do it to Ohio, they can do it to Pennsylvania, or Idaho, all of which have approved or pending waivers.
They may very well be planning to do so as I speak. I appreciate Ms. Brooks-LaSure's experience in working with states to develop these waivers. She sounds to me like a very qualified person. And I appreciate her willingness to meet with me on this issue.

I feel badly for her because this controversy was not necessary. And, frankly, I was looking forward to voting for her nomination. But this unprecedented action by the Administration threatens the security of my state's Medicaid program. It disrespects the continuity of this agreement and erodes the partnership between the state and CMS. And, it sets a dangerous precedent of an administration undoing agreements made in good faith between the states and the Federal Government in a previous administration.

Until Texas can receive an assurance that this action will be rectified, and the rug will not be pulled out from under our poorest patients, I cannot support the nominee at this time. I do not know what else to do. I urge my colleagues to join me in standing up for the health care of all of our constituents, and particularly the most vulnerable in our states.

And, Mr. Chairman, I would just reiterate my request to postpone the vote on Ms. Brooks-LaSure just to give me time to take the Administration up on their offer for
me to talk to the White House Chief of Staff about this. We were not warned ahead of time, and so we are trying to play catchup and reaching out in any way we can to understand why this action was taken, and what we might be able to do to make it right.

The Chairman. Senator Cornyn and colleagues, let me just advise where we are on the state of play. We do not have a quorum now. I would -- we do have a quorum? We do want to give all Senators an opportunity to vote. So, we are hoping in a few minutes to be able to do that.

I just want to respond briefly to Senator Cornyn. I know Senator Cantwell would like to make a comment, and maybe other colleagues on the other side who would like to do it.

With respect to Texas, the Biden Administration was working on this until late in the evening. So they are taking the Senator's concerns very seriously, as am I, as arguably the biggest proponent of getting these waivers right in the United States Senate.

I do think it is important to move forward today, and that is why my hope is that senators will arrive, and we will be able to vote. But as I said earlier, and some colleagues have come in, I have made a pledge to Senator Cornyn. After we move in committee today, we
are going to work very closely with him to try to find common ground here.

It is very important to me, I would say to the Senator from Texas, because my whole thinking on this issue -- you probably recall this -- is I want to give states that want to do waivers for progressive goals the chance to do it, and I want to give states that have conservative objectives, as long as they stay within the guard rails, to do it.

So that is where we are. Senator Cantwell, did you want to be recognized? And then we would go to the Republican side. I see our friends --

Senator Cornyn. Mr. Chairman, can I just make the point that being chairman of the Senate Finance Committee is arguably one of the -- being chairman of one of the most powerful committees in the United States Senate. It is a big deal. But you do not have the power to reverse a CMS decision. I do not have the power to do it. Only CMS and the Administration has that authority.

And so I appreciate your offer. I think you and I have got a good working relationship together. We agree about many things and disagree about some things. But this is unprecedented, as I say, and I do not think, as good as our working relationship is, there is anything
that, frankly, this committee or the Senate can do unilaterally. It requires the cooperation of the Biden Administration and CMS to do it.

The Chairman. We are working exactly toward that objection, and my only difference of opinion is I would not minimize the influence of the Finance Committee's impact on waivers.

Senator Cantwell?

Senator Cantwell. Mr. Chairman if we have --

The Chairman. And then Senator Young.

Senator Cantwell. If we are going to continue to debate, I will make a point. But if we want to vote, I am happy to do that too.

But I think, you know, for me I have long had a question about this. I certainly believe in the 1115 waiver from an innovation perspective. But I definitely feel that our committee should be more aggressive in making sure that the policies that we as a Congress have passed are implemented.

And so, I do have questions. I am pretty sure I probably disagree with the original waiver that was granted by the Trump Administration. I am pretty sure I probably disagree with that. So I probably do not disagree with where the Biden Administration is going.

But what I do think is an issue at stake here is I
do not think it is good policy for us to constantly be,
let's just say undermined in certain ways with what we
as a Congress actually pass and vote on, because a new
Administration comes along and basically arranges a new
deal with a new governor.

The reason I say that is because we write the
checks. Okay? The majority of the checks come from us.
So the policies that we are trying to pursue to save
money for taxpayers to basically implement what we think
is a better health care system, I just feel like needs
to win the day.

So I am pretty sure I probably, you know, agree with
moving states along, but I definitely think it is time
to review the 1115 waiver in the grander context. I can
understand the Senator's frustration, guaranteed there
were times when previous governors in our state cut a
deal with CMS that Senator Murray and I totally
disagreed with. We had a different policy objective
that we thought we had actually passed in Congress and
were moving forward on.

So I just think it is something to look at, look at
how it has been used, how we can better do policy. But
we are the ones who are making these decisions. We are
the ones who are writing these checks. We are the ones
who are saying this is the cost of health care.
So I definitely think that a previous Administration's, you know, desire to circumvent that probably would not come in my category of something that I would have wanted to see. So let's just review this. I think voting on Ms. Brooks-LaSure still gives the Senator time to address this issue as we move to the floor. We all know the floor continues to be another process.

But I do hope we would look at this larger issue of 1115 waivers, how they are used, and what we can do to assure that good, cost-savings health care policy that the Federal Government wants to see is implemented by states. Thank you.

The Chairman. I thank my colleague. And now I want to ask a courtesy of Senator Young. We now have sufficient votes in order to vote, Senator Young. Would it be possible, because Senators are in bedlam this morning -- they are all running to committees -- that we could vote, and you will be recognized first after the vote? Is that acceptable to my colleague?

Senator Cornyn. Mr. Chairman, may I just please ask a question?

The Chairman. Sure.

Senator Cornyn. I thought the purpose of debate was to try to persuade each other to maybe their point of
view. Having a vote before senators have had a chance
to express themselves on this matter, which is pretty
important and this unprecedented revision of a waiver,
could happen to any of us. I would object, for what it
is worth -- I know you can overrule my objection -- but
I object to putting the vote to the committee without
giving senators a chance to express themselves.

Senator Young. Mr. Chairman, just as a matter of
professional courtesy, why don't I compress my
five-minute comments down to 60 seconds?

The Chairman. That would be terrific. I appreciate
my colleague's thoughtfulness, and we are going to have
lots of debate on this waiver issue, colleagues.

Senator Young?

Senator Young. Well, I would commend the leader,
our Chairman, on your leadership on waiver authority. I
think we need waiver certainty. The State of Indiana
has implemented a very popular program under the 1115
waiver program. It is the Healthy Indiana Plan. To
think that that could be jeopardized, after President
Obama and the CMS under that Administration approved it,
is really troubling to me. So I do not see this as a
major inconvenience.

I fully anticipate supporting this nominee after
this is resolved, but I agree with the gentleman from
Texas. I stand in solidarity, and I welcome my colleagues from both sides of the aisle so that no states have to undergo this lack of certainty. And the Senator from Washington, I agree, perhaps structurally we need to take a look at how we address these waivers. Thank you. I yield back.

The Chairman. I thank my colleague for his courtesy. A quorum is now present. We will consider the nomination. I move that the Committee favorably report the nomination of Andrea Joan Palm of Wisconsin to be Deputy Secretary of Health and Human Services. Is there a second?

[Motion is duly seconded.]

The Chairman. The clerk will call the roll.

The Clerk. Ms. Stabenow?
Senator Stabenow. Aye.

The Clerk. Ms. Stabenow, aye. Ms. Cantwell?
Senator Cantwell. Aye.

The Clerk. Ms. Cantwell, aye. Mr. Menendez?
Senator Menendez. Aye.

The Clerk. Mr. Menendez, aye. Mr. Carper?

The Clerk. Mr. Carper, aye. Mr. Cardin?
Senator Cardin. Aye.

The Clerk. Mr. Cardin, aye. Mr. Brown?
The Clerk. Mr. Brown, aye. Mr. Bennet?
Senator Bennet. Aye.
The Clerk. Mr. Bennet, aye. Mr. Casey?
Senator Casey. Aye.
The Clerk. Mr. Casey, aye. Mr. Warner?
The Clerk. Mr. Warner, aye. Mr. Whitehouse?
The Clerk. Mr. Whitehouse, aye. Ms. Hassan?
Senator Hassan. Aye.
The Clerk. Ms. Hassan, aye. Ms. Cortez Masto?
Senator Cortez Masto. Aye.
The Clerk. Ms. Cortez Masto, aye. Ms. Warren?
The Clerk. Ms. Warren, aye. Mr. Crapo?
Senator Crapo. Aye.
The Clerk. Mr. Crapo, aye. Mr. Grassley?
[No response.]
The Clerk. Mr. Cornyn?
Senator Cornyn. This is on the Palm nomination?
The Chairman. Yes, sir.
Senator Cornyn. Aye.
The Clerk. Mr. Cornyn, aye. Mr. Thune?
Senator Thune. No.
The Clerk.  Mr. Thune, no.  Mr. Burr?

Senator Crapo.  Aye by proxy.

The Clerk.  Mr. Burr, aye by proxy.  Mr. Portman?

Senator Crapo.  Aye by proxy.

The Clerk.  Mr. Portman, aye by proxy.  Mr. Toomey?

Senator Crapo.  No by proxy.

The Clerk.  Mr. Toomey, no by proxy.  Mr. Scott?

Senator Crapo.  No by proxy.

The Clerk.  Mr. Scott, no by proxy.  Mr. Cassidy?

Senator Crapo.  No by proxy.

The Clerk.  Mr. Cassidy, no by proxy.  Mr. Lankford?

Senator Lankford.  No.

The Clerk.  Mr. Lankford, no.  Mr. Daines?

Senator Daines.  No.

The Clerk.  Mr. Daines, no.  Mr. Young?

Senator Young.  Aye.

The Clerk.  Mr. Young, aye.  Mr. Sasse?

Senator Crapo.  No by proxy.

The Clerk.  Mr. Sasse, no by proxy.  Mr. Barrasso?

Senator Barrasso.  No.

The Clerk.  Mr. Barrasso, no.  Mr. Chairman?

The Chairman.  Aye.

The Clerk.  The chairman votes aye.  Mr. Grassley?

Senator Grassley.  No.
The Clerk.  Mr. Grassley, no.

The Clerk.  Mr. Chairman, the final tally is 20 ayes and 8 nays.

The Chairman.  The nomination is reported favorably, colleagues. I now move that the committee favorably report the nomination of Chiquita Brooks-LaSure of Virginia to be Administrator of the Centers for Medicare and Medicaid Services. Is there a second?

[Motion is duly seconded.]

The Chairman.  The clerk will call the roll.

The Clerk.  Ms. Stabenow?

Senator Stabenow.  Aye.

The Clerk.  Ms. Stabenow, aye.  Ms. Cantwell?

Senator Cantwell.  Aye.

The Clerk.  Ms. Cantwell, aye.  Mr. Menendez?

Senator Menendez.  Aye.

The Clerk.  Mr. Menendez, aye.  Mr. Carper?


The Clerk.  Mr. Cardin?

Senator Cardin.  Aye.

The Clerk.  Mr. Cardin, aye.  Mr. Brown?


The Clerk.  Mr. Brown, aye.  Mr. Bennet?

Senator Bennet.  Aye.

The Clerk.  Mr. Bennet, aye.  Mr. Casey?
Senator Casey. Aye.

The Clerk. Mr. Casey, aye. Mr. Warner?


The Clerk. Mr. Warner, aye. Mr. Whitehouse?


The Clerk. Mr. Whitehouse, aye. Ms. Hassan?

Senator Hassan. Aye.

The Clerk. Ms. Hassan, aye. Ms. Cortez Masto?

Senator Cortez Masto. Aye.

The Clerk. Ms. Cortez Masto, aye. Ms. Warren?


The Clerk. Ms. Warren, aye. Mr. Crapo?

Senator Crapo. No.

The Clerk. Mr. Crapo, no. Mr. Grassley?

[No response.]

The Clerk. Mr. Cornyn?

Senator Cornyn. No.

The Clerk. Mr. Cornyn, no. Mr. Thune?

Senator Thune. No.

The Clerk. Mr. Thune, no. Mr. Burr?

Senator Crapo. No by proxy.

The Clerk. Mr. Burr, no by proxy. Mr. Portman?

Senator Crapo. No by proxy.

The Clerk. Mr. Portman, no by proxy. Mr. Toomey?

Senator Crapo. No by proxy.
The Clerk. Mr. Toomey, no by proxy. Mr. Scott?

Senator Crapo. No by proxy.

The Clerk. Mr. Scott, no by proxy. Mr. Cassidy?

Senator Crapo. No by proxy.

The Clerk. Mr. Cassidy, no by proxy. Mr. Lankford?

Senator Lankford. No.

The Clerk. Mr. Lankford, no. Mr. Daines?

Senator Daines. No.

The Clerk. Mr. Daines, no. Mr. Young?

Senator Young. No.

The Clerk. Mr. Young, no. Mr. Sasse?

Senator Crapo. No by proxy.

The Clerk. Mr. Sasse, no by proxy. Mr. Barrasso?

Senator Barrasso. No.

The Clerk. Mr. Barrasso, no. Mr. Chairman?

The Chairman. Aye.

The Clerk. The chairman votes aye. Mr. Grassley?

Senator Grassley. No.

The Clerk. Mr. Grassley, no.

The Chairman. The clerk will announce the vote.

The Clerk. Mr. Chairman, the final tally is 14 ayes, 14 nays.

The Chairman. Okay. Colleagues, in the instance of a tie vote, and the committee not having reported the
nomination because of the tie vote, in accord with Senate Resolution 27, I will transmit a notice of the tie vote to the Secretary of the Senate in accordance with section 3.1(a) of such resolution, thereby giving either the majority or minority leader the authority to make a motion to discharge the nomination. And I want to repeat for colleagues that have just come in, now it is my intent to work closely with the Senator from Texas, the Administration, folks represented here -- and those discussions will begin immediately.

And with that, the business meeting is now adjourned. And, colleagues, we will begin the hearing on China and competitiveness in just a few minutes when everybody has a chance to get settled. That will be a virtual hearing. With that, the business meeting is now adjourned.

[Whereupon, at 10 a.m., meeting was concluded.]
STATEMENT OF: Hon. Ron Wyden, a U.S. Senator from Oregon, chairman, Committee on Finance

Hon. Mike Crapo, a U.S. Senator from Idaho

Hon. John Cornyn, a U.S. Senator from Texas