

CONGRESS OF THE UNITED STATES  
Washington, D.C

March 12, 2007

The Honorable Michael O. Leavitt  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

**Re: File Code CMS-2258-P**

Dear Mr. Secretary:

As the chairmen of the House and Senate committees and subcommittees with jurisdiction over both the Medicaid program and the Health and Human Services' administration or its oversight, we have grave concerns about the proposed rule (CMS-2258-P) entitled "Medicaid Program; Cost Limit for Providers Operated by Units of Government and Provisions to Ensure the Integrity of Federal-State Financial Partnership," issued January 18, 2007, and its effects on safety net providers throughout the country.

As currently proposed, the rules to implement this provision are not sufficiently clear and in addition will result in unintended harmful consequences. We request that you respond to the attached questions no later than Monday, March 26, 2007, and that our comments be placed in the public record of the rulemaking.

The proposed rule seeks to narrow the definition of government-related health providers and thus limits the funding sources available to States to finance Medicaid, and singles out public providers to limit their reimbursement to cost through the use of certified public expenditures. We are chiefly concerned that the proposed rule will have a severe adverse affect on the nation's public safety net and its ability to continue delivering critical health services to Medicaid beneficiaries and the uninsured. It could also lead to widespread bed closures and loss of vital but generally unprofitable services that benefit everyone in the community, such as trauma centers, burn units, and emergency departments.


We have concerns that limiting reimbursement to Government healthcare providers to "cost" as defined in the proposed rule will prohibit the ability of States to sufficiently fund their portion of Medicaid matching funds, effectively limiting the delivery of necessary healthcare services to low-income Americans. Additionally, we are concerned that the narrow definition of Government healthcare providers will eliminate or reduce funding to State university hospitals, public nursing homes, and other providers, thereby eliminating or reducing access to health care for millions of the Nation's lowest income beneficiaries and the uninsured.

Finally, we are concerned that the policy could adversely affect inpatient capacity and community access to vital services such as trauma centers at a time when our Nation is faced with significant threats to the public.

The attached questions should help clarify the scope of the rule and the effect it will have on these providers and the low-income and uninsured beneficiaries they serve.

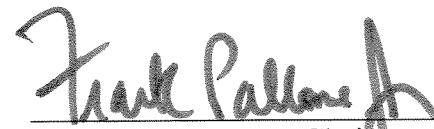
If you need further information, please contact any of us, or have your staff contact Bridgett Taylor with the House Committee on Energy and Commerce at (202) 225-2927, Karen Nelson with the House Committee on Oversight and Government Reform at (202) 225-5051, or Alice Weiss with the Senate Committee on Finance at (202) 224-4515.

Sincerely,




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John D. Dingell, Chairman  
House Committee on Energy and Commerce




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Frank J. Pallone, Jr., Chairman  
Subcommittee on Health  
House Committee on Energy and Commerce




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Henry A. Waxman, Chairman  
House Committee on Oversight and  
Government Reform



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Max Baucus, Chairman  
Senate Committee on Finance



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John D. Rockefeller, Chairman  
Subcommittee on Health Care  
Senate Committee on Finance

Attachment

cc: The Honorable Leslie V. Norwalk, Acting Administrator  
Centers for Medicare and Medicaid Services

**Questions for the Hon. Secretary Leavitt**  
**From Hon. John D. Dingell, Hon. Frank J. Pallone, Jr., Hon. Henry A. Waxman,**  
**Hon. Max Baucus, and Hon. John D. Rockefeller**

**Quantifying the Impact of the Regulation**

1. How did the Centers for Medicare and Medicaid Services (CMS) construct the estimate of reduction in Federal Medicaid outlays? Specifically:
  - a. What savings are associated with each component of the regulation (i.e., limit to cost, definition of unit of government, retention provision, etc.)?
  - b. How were savings estimated for FY2007?
  - c. What are the specific policy changes and assumptions that drive differential year-over-year increases? For example, the increase in Federal savings is approximately \$300 million between FFY 2008-09 and 2009-10 but the increase is only \$30 million between FFY 2010-11.
2. What is the individual state-by-state Federal Medicaid dollar impact by class of facility of: cost limits for public providers; changes in the definition of public hospitals; changes in the definition of certified public expenditures; changes in UPL policy; limits on IGTs and DSH? Please provide answers for both waiver and non-waivered States.
3. Please provide a list of affected States and facilities and a list of States and facilities already in compliance.
4. Please explain how the rule will affect States' existing waiver budget neutrality calculations. Will States have to recalculate their budget neutrality cap as a result of the rule? If so, which States will be adversely affected?

**Other Questions and Clarifications**

1. The Medicaid program has a longstanding history of serving as the principal financial support of the safety net and ensuring access for vulnerable populations—including Medicaid patients and the uninsured—who might otherwise go without care. The regulatory impact analysis asserts that this rule's effect on actual patient services will be minimal (p.49). Please produce the economic and other assumptions used in arriving at this estimate.

2. Section 1903 defines units of local government as a city, a county, a special purpose district, or other governmental unit of State. This regulation narrows that definition dramatically by requiring the entity to have taxing authority in order to be considered a unit of government. Congress's broader definition provides States with much more leeway to identify for themselves which entities are units of local government. Please justify your policy rationale for such a restrictive definition. Please list the entities that, by this definition, would be excluded that are currently considered a unit of local government.