Opening Statement of Rep. Henry A. Waxman
Chairman, Committee on Oversight and Government Reform
The Lack of Hospital Emergency Surge Capacity: Will the Administration's Medicaid Regulations Make It Worse?
Day One
May 5, 2008

Today we are holding the first of two days of hearings on the impact of the Administration's Medicaid regulations on hospital emergency surge capacity — the ability of hospital emergency rooms to respond to a sudden influx of casualties from a terrorist attack.

The Committee held a hearing in June of 2007 on the nation's emergency care crisis. We heard from emergency care physicians that "America's emergency departments are already operating at or over capacity." We were warned that if the nation does not address the chronic overcrowding of emergency rooms, their ability to respond to a public health disaster or terrorist attack will be severely jeopardized.

The Department of Health and Human Services was represented at that hearing. But despite the warnings, the Department has issued three Medicaid regulations that will reduce federal funds to public and teaching hospitals by tens of billions of dollars over the next five years.

The Committee held a hearing on these and other Medicaid regulations in November of 2007. An emergency room physician told us that if these regulations are allowed to go into effect, the nation's emergency rooms will take a "devastating" financial hit.

The two hearings we will be holding this week will focus on the impact of these Medicaid regulations on our capacity to respond to the most likely terrorist attack — one using bombs or other conventional explosives.

Today we will be hearing from an independent expert on terrorism, an emergency room physician, a trauma surgeon, a nurse with expertise in emergency preparedness, and a state official responsible for planning for disasters like a terrorist attack.

On Wednesday, we will hear testimony from the two federal officials with lead responsibility for homeland security and for Medicaid: the Secretary of Homeland Security, Michael Chertoff and the Secretary of Health and Human Services, Michael Leavitt.

In preparation for this hearing, the Committee majority staff conducted a survey of emergency room capacity in five cities considered at greatest risk of a terrorist attack — Washington, D.C., New York, Los Angeles, Chicago, and Houston — as well as Denver and Minneapolis, where the nominating conventions will be held later this year.

The survey took place on Tuesday, March 25, at 4:30 p.m. local time. 34 Level I trauma centers participated in the survey.

What the survey found was truly alarming:

- The 34 hospitals surveyed did not have sufficient ER capacity to treat a sudden influx of victims from a terrorist bombing.
- The hospitals had virtually no free intensive care unit beds to treat the most seriously injured casualties.
- The hospitals did not have enough regular inpatient beds to handle the less seriously injured victims.

The situation in Washington, D.C. and Los Angeles was particularly dire. There was no available space in the emergency rooms at the main trauma centers serving Washington, D.C. One emergency room was operating at over 200% of capacity: more than half the patients receiving emergency care in the hospital had been diverted to hallways and waiting rooms for treatment.

And in Los Angeles, three of the five Level I trauma centers were so overcrowded that they went "on diversion," which means they closed their doors to new patients.

If a terrorist attack had occurred in Washington, D.C. or Los Angeles on March 25 when we did our survey, the consequences could have been catastrophic. The emergency care systems were stretched to the breaking point and had no capacity to respond to a surge of victims.

Our investigation has also revealed what appears to be a complete breakdown in communications between the Department of Homeland Security and the Department of Health and Human Services.

In October of 2007, the President issued homeland security directive number 21. The directive requires the Secretary of HHS to identify any regulatory barriers to public health and medical preparedness that can be eliminated by appropriate regulatory action. It also requires Secretary of HHS to coordinate with the Secretary of DHS to ensure we maintain a robust capacity to provide emergency care.

Yet when the Committee requested documents reflecting an analysis of the potential implication of the Medicaid regulations on hospital emergency surge capacity, neither Department was able to produce a single document.

This is incomprehensible. It appears that Secretary Leavitt signed regulations that will take hundreds of millions of dollars away from hospital emergency rooms without once considering the impact on national preparedness.

And it appears that Secretary Chertoff never raised a single objection.

The Department of Health and Human Services was represented at the Committee's June 2007 hearing on the emergency care crisis. The importance of adequate federal funding for emergency and trauma care was repeatedly stressed by the expert witnesses at the hearing. If Secretary Leavitt approved the Medicaid regulations without considering their impact on preparedness and consulting with Secretary Chertoff, that would be a shocking and inexplicable breach of his responsibilities.

The most damaging of the Administration's Medicaid regulations will go into effect on May 26, just three weeks from today. As the House voted overwhelmingly, the regulations should be stopped until their true impacts can be understood.

I don't know whether the House legislation will pass the Senate or, if it does, whether the bill will survive a threatened presidential veto. But I do know that Secretary Leavitt and Secretary Chertoff have the power to stop these destructive regulations from going into effect. And I intend to ask them whether they will use their authority to protect hospital emergency rooms.

The federal government has poured billions of dollars into homeland security since the 9/11 attacks. As investigations by this Committee have documented, much of this investment was squandered in boondoggle contracts. This was evident after Hurricane Katrina, when our capacity to respond fell tragically short.

The question we will be exploring today and on Wednesday is whether a key component of our national response — hospital emergency rooms — will be ready when the next disaster strikes.