Congress of the United States
Washington, DC 20515

March 19, 2007

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

Dear Secretary Leavitt:

We are writing to request that you withdraw proposed rule CMS-2258-P, which was published on January 18, 2007. We also request that this letter be included in the record of public comments on this proposed rule. The proposal would, among other things, threaten the capacity of safety net hospitals to deliver critical but unprofitable services that benefit entire communities, such as trauma centers, burn units, and emergency departments. In our opinion, by proposing this rule, the Centers for Medicare & Medicaid Services (CMS) exceeded its statutory authority and ignored the direct opposition of a majority of Congress.

Your proposal would fundamentally change current financing and payment arrangements in many state Medicaid programs. By your own estimates, this would result in the loss of at least $3.8 billion in the federal share of Medicaid payments to safety net providers over the next five years. As you know, Congress has in the past rejected, on a bipartisan basis, repeated efforts by the Administration to amend the Medicaid statute to make these changes, including proposals in the President's FY 2005 and FY 2006 budget requests. You now propose to make these fundamental changes by administrative action. You have neither the statutory authority nor the Congressional support to do so.

In addition, we are highly concerned about the timing of this proposed rule. U.S. hospitals are already diverting more than 1/2 million ambulances per year due to facility crowding. Our Nation remains at risk of terrorist attacks, and we are currently expending considerable federal, state and local resources preparing for a possible onslaught of avian flu.

Under these circumstances, we question the wisdom of a policy change that will withdraw large amounts of federal and state Medicaid funds from institutions that play an essential part of the health care systems of our nation's largest and most strategic cities. Doing so will inevitably compromise vital emergency and trauma care capacity.

We urge you to withdraw the proposed rule.

Sincerely,

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