Partnership for Medicaid

February 12, 2008

The Honorable Harry Reid
Majority Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Boehner
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Senator Reid, Senator McConnell, Speaker Pelosi, and Representative Boehner:

The undersigned members of the Partnership for Medicaid – a coalition of safety net health care providers – are writing to express our deep concern and strong objection to a number of actions called for by the Administration that threaten the ability of low-income individuals and families to access care through the Medicaid program.

We are particularly disturbed by a series of proposed and current Medicaid regulations and guidance by the Center for Medicare and Medicaid Services (CMS) that threaten to narrow states' ability to **disregard some portion of family income**, such as earnings or child care expenses, in determining Medicaid and SCHIP eligibility. These actions could result in significantly fewer low-income individuals and families being eligible for these important programs.

We also are concerned about the CMS' apparent decision to apply **the August 17 SCHIP policy directive** to Medicaid, as exemplified in cases involving state Medicaid programs in Ohio, Louisiana and Oklahoma. It is our belief that the promulgation of the original letter was unlawful given the lack of notice and comment rulemaking as required by the Administrative Procedures Act. It is our further belief that limiting states' ability to cover needy children above 250% of the federal poverty line denies children in need access to comprehensive and quality health services that they may not receive from other sources, including private sector coverage.

In addition, we are deeply concerned that the new eligibility rules and the series of proposed and issued regulations by CMS dramatically alter Title XIX of the Social Security Act with little or no statutory authority.

- For example, CMS proposes almost $6 billion in budget cuts by reducing access to community-based services under **the rehabilitative services option** and eliminating **transportation and administrative support services** for children with disabilities enrolled in special education programs.

- Similarly, CMS promulgated **Targeted Case Management** (TCM) rules that cut this important state optional program by $1.2 billion primarily by shifting the cost of case management services to cash strapped state and local governments.

These regulations – when combined – include hundreds of pages of regulatory requirements with scant statutory justification and the recipients harmed are some of the most vulnerable patient populations in our society: low-income pregnant women, children with developmental disabilities, persons with severe mental illnesses, youngsters in the foster care system and individuals living with HIV/AIDS.

Beyond these actions, there are three additional regulations that threaten the already fragile viability of the nation's health care safety net. The **public provider cost limit rule**, **graduate medical education (GME) rule** and **outpatient payment rule** would impose sweeping Medicaid funding cuts that will force safety net hospitals and other safety net providers to eliminate vital community services for patients. Many providers, as well as the states themselves, would be hurt by these rules, as Medicaid revenues are a crucial source of funding for nursing homes, intermediate care facilities and school-based clinics.

The public provider cost limit rule's restrictions on the ability and flexibility of states to support the safety net, by limiting how states finance the Medicaid program, would leave states with significant budget shortfalls that could force them to cut services or impose taxes to make up for the losses. In addition, the Medicaid GME payment cuts would obstruct the ability of teaching hospitals to provide essential services including the education of the next generation of medical professionals despite a shortage of medical professionals around the country. Finally, the outpatient rule would significantly reduce the outpatient Medicaid services that would be eligible for reimbursement.

The Partnership also agrees with the nation's governors that a proposed rule to alter the role of the **Departmental Appeals Board** at the Department of Health and Human Services threatens to undermine the DAB review process by weakening the board's impartiality and exposing the appeals process to subjective decisions or extraneous factors. It is critical that states and providers are afforded prompt, fair, and impartial dispute resolution services involving actions and decisions by the Department.

The Partnership for Medicaid is committed to fiscal responsibility and finding ways to pay for those initiatives for which we advocate. However, given the original policy changes are administrative in nature, we believe there is a case to be made that no score should be given to address these administrative actions. CMS is attempting to circumvent the legislative process and establish significant health policy changes, to which the majority of Congress are opposed, through administrative means, which may themselves be subject to legal challenge. Therefore, congressional efforts to stop these Medicaid rules through statutory moratoria should not be scored because Congress is only attempting to extend existing Medicaid policy and reassert its constitutional responsibility by halting the unilateral rewriting of federal health policies that impact over 55 million low-income Americans.

However, should Congress decide to score these moratoria, the Partnership for Medicaid is on record supporting numerous policies that we believe can be used as offsets. For example, the Partnership has supported legislation to extend the Medicaid drug rebate to Medicaid health plans – recently scored by the CBO as saving $2 billion. Should

Congress need to offset this proposal, we urge Congress to consider this proposal along with others to pay for these important moratoria.

Thank you for your consideration of our views. We look forward to working with you on behalf of the more than 55 million recipients who rely on Medicaid for vital coverage, and the providers who serve them. Should you have any questions about these or other issues please feel free to contact any of our organizations or call Licy Do Canto at (202) 296-1721.

Sincerely,

AMERICAN ACADEMY OF FAMILY PHYSICIANS

AMERICAN ACADEMY OF PEDIATRICS

AMERICAN HEALTH CARE ASSOCIATION

AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS

ASSOCIATION OF CLINICIANS FOR THE UNDERSERVED

ASSOCIATION FOR COMMUNITY AFFILIATED PLANS

MEDICAID HEALTH PLANS OF AMERICA

NATIONAL ASSOCIATION OF CHILDREN'S HOSPITALS

NATIONAL ASSOCIATION OF COMMUNITY HEALTH CENTERS

NATIONAL ASSOCIATION OF PUBLIC HOSPITALS & HEALTH SYSTEMS

NATIONAL COUNCIL FOR COMMUNITY BEHAVIORAL HEALTHCARE

NATIONAL HISPANIC MEDICAL ASSOCIATION

NATIONAL MEDICAL ASSOCIATION

NATIONAL RURAL HEALTH ASSOCIATION

AFL-CIO