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December 16, 2003

The Honorable Tommy G. Thompson
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Thompson:

The nation's hospitals seek your help in navigating federal regulations that make it far too difficult and frustrating to give uninsured Americans and others of limited means the same reduced rates for hospital care that state and federal governments, health plans and private insurers ultimately pay.

As you know, federal regulation makes it a practical requirement that a hospital bill all patients according to the same schedule of charges, regardless of who provides their coverage. But the amount the hospital actually is reimbursed by the various payors is quite a different story. Medicare pays under its own system, often less than the actual cost of hospital care. State Medicaid programs pay according to a variety of methods, again less than actual costs. Private insurers and health plans negotiate aggressively for the biggest payment discounts they can extract from hospitals.

In the end, one group of patients is left behind. With no one to negotiate on their behalf, uninsured Americans and others of limited means are often billed and required to pay full charges. This unfair situation is the unfortunate result of the fragmented and contradictory way health care in America is paid for and America's inability to find some way to get affordable coverage to the 44 million people who don't have it today. It is one aspect of health care in America that truly is broken.

Hospitals believe that patients of limited means should not have to pay full charges simply because they have no coverage. But federal Medicare regulations as written today contain a string of barriers that discourage hospitals from reducing charges or forgiving debt for these patients without potentially running afoul of the law. And our members tell us that past experience with federal regulation enforcement makes them extremely reluctant to risk it.

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And the bill for full charges is only the beginning of what can be a long and sometimes confusing process patients must navigate. The vast majority of America's hospitals try to have fair and clear policies to help patients find financial assistance or to find out if they qualify for charity care – assistance for the truly indigent. And they try to administer those policies well. For patients who have some ability to pay, hospitals try to work out a fair way for them to pay their bills. But all of this often can be complicated and filled with anxiety and sometimes communication is poor and the practices of hospitals inconsistent.

I think you will agree that this is a situation that clearly is in need of attention, particularly in a time when so many Americans are uninsured, underinsured or worried that their coverage may erode or vanish altogether. There are opportunities for action by both the hospital field and the federal government to assure the public that we are doing all we can to help those of limited means.

At its November meeting and after extensive consultation with hospital leaders from across the nation, the American Hospital Association's Board of Trustees approved a set of principles and guidelines which they are asking the Association's nearly 5,000 members to use as a standard for assuring that all of their policies and actions in this area are open, fair and appropriate. Those principles and guidelines have been communicated to our members and we are developing educational materials and other resources to help them use them effectively.

But your help is essential in clearing away the underbrush of federal regulation cited earlier in this letter that would make it clear that hospitals have the ability to do what they can to respond to the needs of these patients.

We are enclosing an analysis of the regulatory environment that hones in on the actions we believe are needed. But specifically, we ask that the Department of Health and Human Services:

- Work through the Centers for Medicare and Medicaid Services and the Office of the Inspector General to develop safe harbor protection for discounting or waiving charges for collections for patients of limited means who are unable to pay their hospital bills. Such protection does not currently exist to guide hospitals in this area. Hospital programs that fall within the safe harbor would be protected from challenges to their payments and from the OIG under its enforcement authority.
- Institute an advisory opinion process that would allow hospitals to seek and receive binding regulatory guidance on a timely basis. This would augment the safe harbor protection and encourage hospitals to continue to develop policies and programs to assist patients of limited means.

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- Create a panel of hospitals and others involved in this issue to explore solutions to the existing regulatory barriers described in the enclosed analysis and prevent new ones from cropping up. The panel would also develop other processes, tools and resources that would enable hospitals to create new and innovative programs to meet the needs of patients of limited means who are unable to pay their hospital bills.

You have our pledge to work closely and productively with you on this important issue. American Hospital Association staff members are ready to meet with whomever you designate to discuss these issues in detail and go to work with the mutual goal of doing more to help those in need.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Dausche", followed by a long horizontal line extending to the right.

Enclosure