



March 1, 2006

The Honorable Arlen Specter
U.S. Senate
711 Hart Senate Office Building
Washington, DC 20510

Dear Senator Specter:

As the Senate Judiciary Committee begins to consider reforming America's immigration laws, the American Hospital Association (AHA) and the National Association of Public Hospitals and Health Systems (NAPH) want to express our serious concerns regarding several provisions of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437).

The AHA and NAPH believe in strong and effective enforcement of the immigration laws. But we believe the House border protection bill would place hospitals in serious difficulty in complying with existing federal laws. The bill also could hinder hospitals' ability to carry out their mission of providing health care to all who come through their doors.

We recognize that your draft mark for the pending mark-up in the Senate Judiciary Committee has narrowed the scope of the House language significantly. We commend your efforts in this regard and hope that the information supplied in this letter will assist you in resisting any broadening of the provisions of concern in the legislative process ahead. In fact, with respect to the criminalizing of status violations, we suggest that further narrowing is in order.

The AHA represents 4,800 member hospitals, health care systems, and other health care organizations and 33,000 individual members. The NAPH represents more than 100 metropolitan-area safety net hospitals and health systems that are significant providers of care to low-income and uninsured patients including the undocumented alien community.

Undocumented aliens' use of medical services has been a longstanding issue for hospitals. As required by federal law -- the Emergency Medical Treatment and Labor

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Act (EMTALA) -- hospitals participating in Medicare must medically screen all persons seeking emergency care regardless of their citizenship or immigration status. Those who have emergency conditions must be provided treatment necessary to stabilize them, regardless of insurance coverage or ability to pay.

Under section 1011 of the 2003 Medicare Modernization Act, the Centers for Medicare & Medicaid Services reimburses hospitals and other providers for some of their uncompensated care costs for emergency services to undocumented immigrants. The section provides funds through at least FY 2008. To obtain reimbursement, hospitals must provide evidence of the services provided to individuals who are not in legal immigration status. Hospitals must ask for documents, as part of their routine inquiry, establishing the patient's legal residency. In some instances, patients will self-proclaim that they are "illegal."

Section 202 of H.R. 4437 would expand current law in defining "smuggling" activities subject to prosecution under federal law. For instance, amended Section 274(a)(1)(C) would subject to criminal liability anyone who "assists . . . a person to reside in or remain in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to reside in or remain in the United States." Hospitals complying with federal law cannot help but become aware of the certain or probable illegal status of patients that they are legally and ethically required to treat. And surely, such treatment provides assistance to the alien in remaining in the United States. The House bill similarly criminalizes anyone who "conceals" an alien's illegal status or attempts to provide assistance. (See amended Section 274(a)(1)(E) and (G)). In addition to criminal penalties, violators face seizure and forfeiture of their assets. (See amended Section 274(c)).

Hospitals cannot reasonably be expected to function under such conflicting mandates. Assurances by some sponsors of this language that it will not be enforced against providers give us little comfort. No legislator can give such an assurance except through specific legislative language. Our hospitals are duty-bound to comply with applicable laws and regulations. There is no need for such overreaching language to assure the prosecution of those who intentionally engage in smuggling activities.

America's community hospitals provide care to anyone who walks through their doors – regardless of race, ethnicity, or immigration status – 24 hours a day, seven days a week. We are deeply concerned that caregivers who render medical services, knowing or strongly suspecting that the recipient lacks legal status, would be subject to prosecution. We do not believe this policy is in the best interest of the patients we serve and the nurses and physicians who provide care. As the Committee begins to put together an immigration reform bill, we strongly urge you to reject such provisions or at least exempt health care providers from a broadened definition of the offense.

We also are concerned that individuals "unlawfully present" in the U.S., no matter how minor or unintentional the infraction, would be guilty of a felony under H.R. 4437. In

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addition to the threat of prosecution, this creates permanent disabilities for the individual in securing future immigration benefits. Under the immigration laws, criminal violations, once admitted, are as devastating as a conviction. So it is not the prosecution of, but the legal definition of "illegal presence" as a felony that would wreak havoc. It is common for processing delays and bureaucratic mistakes to cause status violations among the most innocent of aliens. Often, it is delays at the agencies of the federal government that contribute to these problems. It is unclear what public purpose is served by adding criminal penalties, even at the misdemeanor level, to violations that reflect more on the complexities of immigration law and procedure than on any evil intent by otherwise law-abiding aliens. A higher threshold for criminal penalties deserves consideration, such as a "willful violation" standard.

Hospitals and health care providers strive to ensure that their employees comply with law. Many hospital employees – physicians, nurses, and other caregivers – are legal immigrants authorized to work in this country. However, it is conceivable that at some point during their employment, they may fall out of compliance with immigration law. Inadvertent errors in paperwork, delays in change-of-status which are beyond the control of the employee or the hospital, or simple oversight can occur. We urge Senators to proceed with great caution regarding this provision.

Lastly, as the Senate revises of worksite enforcement provisions, we urge you to minimize the paperwork and bureaucratic burden on employers. Health care providers face a myriad of government rules and regulations. In a study for the AHA, PricewaterhouseCoopers found that physicians, nurses and other hospital staff spend on average at least 30 minutes on paperwork for every hour of patient care provided to a typical Medicare patient. In the emergency department, every hour of patient care generates an hour of paperwork – including complying with the vast array of federal, state, and local health regulations. We urge lawmakers to ensure that any worker verification program that is put into effect be accurate, quick, inexpensive and not burden health care providers.

The AHA and NAPH look forward to working with you on legislation that addresses concerns about border security, while ensuring that hospitals can continue to fulfill their mission and comply with legislative mandates to care for all who come through their doors.

Sincerely,

Rick Pollack
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American Hospital Association

Larry Gage
President
National Association of Public
Hospitals and Health Systems