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March 14, 2007

Dear Representative:

I am writing on behalf of the American Hospital Association (AHA) to express our strong opposition to language in the Emergency Supplemental Appropriations bill that rescinds funding for hospitals that provide health care services to undocumented immigrants pursuant to section 1011 of the Medicare Modernization Act (MMA, Public Law 108-173). The AHA represents nearly 5,000 hospitals, health systems, networks and other health care providers.

Section 1011 of the MMA provides \$250 million annual for four years – Fiscal Years (FY) 2005 through 2008 – to help offset the cost of emergency care provided to undocumented immigrants. Due to a lag in implementation and complex rules for receiving the funds, hospitals have only recently been able to access the funds through electronic claims filing beginning in May 2005 – nearly two years after enactment of the MMA. As a result, hospitals have not used all the funds available to them. A growing number of hospitals are now participating in the program and some states are exceeding their state's allotment and incurring a statutory pro-rata reduction.

Section 6002(c) of the Supplemental seeks to reclaim unspent funds that were allocated to hospitals in FY 2005 and FY 2006 under section 1011, and use them for other purposes. Some have maintained that the unspent FY 2005 and FY 2006 funds are no longer available to hospitals and should be returned to the federal government. However, this interpretation is incorrect. The MMA states that funds appropriated for health care providers under section 1011 *shall remain available until expended*. CMS issued guidance (CMS Document Identifier: CMS-10130) to clarify how section 1011 funds are disbursed:

Congress expressly states that the appropriation shall remain available until expended. In doing so, Congress has removed all statutory time limits as to when the funds may be obligated and expended. In essence, the funds remain available for obligation for authorized purposes until fully obligated within the purposes and limitations attributable to that appropriation. We believe that the statute clearly indicates that the purpose of the appropriation is to make payments to providers within a state subject to the amounts available under the allotment made



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to the state. Once appropriated, the funds become available until expended, with no fiscal year limitations on their availability for expenditure. **In the event that all of the funds allotted to a state in a fiscal year are not used to make payments to providers in that state, we are adopting a position that these unexpended funds continue to remain available for provider payments within that state in subsequent fiscal years.** (Emphasis added).

America's hospitals are open 24 hours a day, seven days a week, 365 days a year and are required by the Emergency Medical Treatment and Active Labor Act (EMTALA) to screen, treat, and stabilize individuals seeking emergency care regardless of income or immigration status. In today's uncertain environment, hospitals are faced with growing financial constraints that have made it difficult to maintain their mission. At the same time, demand for health care services is soaring; over the past 10 years, hospitals have seen a marked increase in emergency department visits. The most recent data from the U. S. Census Bureau suggest that the number of illegal immigrants in the country is 8.7 million individuals, with as many as 500,000 entering our country each year. Some of these individuals incur injuries while crossing the border or come to a hospital emergency room with life-threatening conditions.

Section 1011 funding is vital to states' health care safety net. We strongly urge you to reject language in the Emergency Supplemental Appropriations bill that rescinds section 1011 funding.

Sincerely,

Rick Pollack
Executive Vice President