December 12, 2007

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232 The Capitol
Washington, D.C. 20515

The Honorable Harry Reid
Majority Leader
U.S. Senate
S-221 The Capitol
Washington, D.C. 20515

The Honorable John Boehner
Republican Leader
U.S. House of Representatives
H-204 The Capitol
Washington, D.C. 20515

The Honorable Mitch McConnell
Republican Leader
U.S. Senate
S-230 The Capitol
Washington, D.C. 20515

Dear Speaker Pelosi, Majority Leader Reid, Republican Leader Boehner, and Republican Leader McConnell:

We write to urge immediate congressional action to prevent pending administrative actions by the Centers for Medicare and Medicaid Services (CMS) that will shift billions of dollars in federal costs to states, local governments and school districts. As you are aware, approximately 53 million low-income, elderly and disabled Americans rely on Medicaid for their health care. A strong federal-state partnership continues to be the centerpiece of the program. While states are committed to upholding their responsibility to Medicaid, we have significant concerns that recent actions taken by the Centers for Medicare and Medicaid Services (CMS) will effectively end the federal government's participation in many crucial components of the Medicaid program and shift those costs to states, counties, hospitals, schools, and other providers throughout the country.

Over the last year, CMS has proposed several administrative actions that are a substantial departure from past practices and reflect new and unsupported interpretations in Medicaid law. Almost all of the statutory provisions that CMS seeks to "clarify" have been in place for at least 15 years and some since the inception of Medicaid (Title XIX) in 1965. Many of the rule changes were rejected by Congress when the Deficit Reduction Act of 2005 (DRA) was considered.

While CMS has continued to ask states to accept increased responsibility for health care delivery and access, the agency is simultaneously proposing to decrease state flexibility and authority to respond to this mandate through these rule changes. The end result will be reduced access, lower quality of care and fewer people with health coverage.

Members of Congress have a long history of working together to ensure the federal financial responsibility to the Medicaid program is not arbitrarily reduced and that previous financial commitments are not abandoned. In fact nearly 60 senators and 300 members of the House of Representatives have objected to the myriad of Medicaid rules CMS has recently proposed. Congress has long rejected changes to the Medicaid program that simply shift costs from the federal government to states, as would be the case for nearly every one of the recently proposed CMS administrative actions. It has also been longstanding policy of the National Governors Association, National Conference of State Legislatures and the National Association of Counties to object to such cost shifts.

We write today to ask for Congressional intervention to support the extension of current moratoriums on the Government Provider Cost Limit and graduate medical education (GME) rules and also stop the implementation of the proposed heath care provider tax (except the lowering of the rate from 6 percent to 5.5 percent as directed by Congress), hospital outpatient and clinic definitional/upper payment limit, school-based health, and rehabilitation services rule changes. Taken together the CMS Medicaid cuts will reduce federal funding to states, counties and safety net providers by billions of dollars annually. We cannot stress enough that Congressional action is urgently needed to prevent the rules from becoming final and to provide for a more appropriate and thoughtful review by Congress of these important policy changes. We stand ready to assist you in any way possible.

Sincerely,

Governor Arnold Schwarzenegger
California

Governor Eliot Spitzer
New York

Governor Janet Napolitano
Arizona

Governor Bill Ritter Jr.
Colorado

Governor M. Jodi Rell
Connecticut

Governor Ruth Ann Minner
Delaware

Governor Rod Blagojevich
Illinois

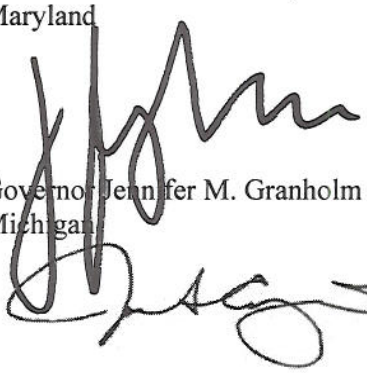
Governor Chester J. Culver
Iowa

Governor Kathleen Sebelius
Kansas

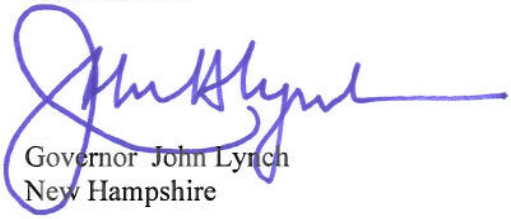
Governor Kathleen Babineaux Blanco
Louisiana

Governor Martin O'Malley
Maryland

Governor Deval Patrick
Massachusetts



Governor Jennifer M. Granholm
Michigan



Governor John Lynch
New Hampshire

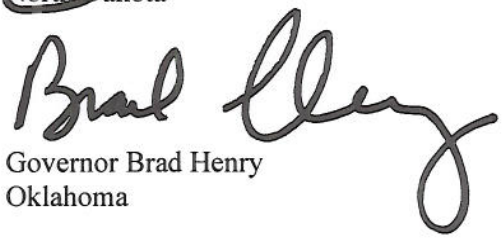
Governor Jon S. Corzine
New Jersey

Governor Bill Richardson
New Mexico

Governor Michael F. Easley
North Carolina

Governor John Hoeven
North Dakota

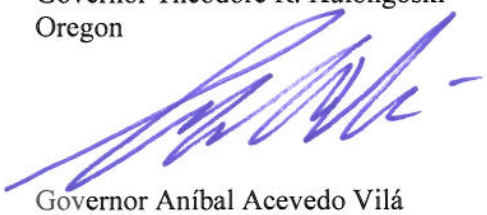
Governor Ted Strickland
Ohio



Governor Brad Henry
Oklahoma

Governor Theodore R. Kulongoski
Oregon

Governor Edward G. Rendell
Pennsylvania



Governor Aníbal Acevedo Vilá
Puerto Rico

Governor M. Michael Rounds
South Dakota

Governor James H. Douglas
Vermont

Governor Timothy M. Kaine
Virginia

Governor John DeJongh, Jr.
Virgin Islands

Governor Christine O. Gregoire
Washington

Governor Jim Doyle
Wisconsin

Governor Dave Freudenthal
Wyoming

Enclosure

CMS REGULATORY ACTIONS

CMS REGULATORY ACTION	CONCERN
Government Provider Cost Limit Regulation – Imposes new restrictions on payments to providers operated by units of government and clarifies that those entities involved in the financing of the non- federal share of Medicaid payments must meet a restrictive new definition of unit of government. Congress acted to delay the effective date of this regulation to May 25, 2008. Additional Congressional action is needed to withdraw these regulations or extend the moratorium.	This regulation would adversely impact safety net hospitals. Additionally, the proposed rule oversteps statutory authority by redefining what constitutes a unit of government that may permissibly fund the non-federal share of Medicaid payments. This rule is estimated to result in $120 million in savings during FY 2007 and $3.87 billion in savings over five years according to CMS.
Eliminating Medicaid Reimbursement for Graduate Medical Education (GME) – The CMS proposal would no longer allow Medicaid funding to be used for GME. Congress acted to delay the effective date of the regulations to May 25, 2008. Additional Congressional action is needed to withdraw these regulations or extend the moratorium.	It is of critical importance for Medicaid to continue its commitment to help train our future doctors and to pay for Medicaid services provided by residents. Today, Medicaid provides financial support to facilities that train medical residents. These teaching hospitals are essential to maintain our supply of new physicians. The proposed CMS regulation would simply allow the federal government to walk away from this important commitment to the crucial services provided by teaching hospitals across the country. This rule is estimated to reduce Federal Medicaid outlays by $140 million in FY 2008, and $1.8 billion over five years according to CMS.
Health Care Provider Tax – The proposed CMS rule would redefine permissible provider taxes and it would give CMS broad new authority to approve or disapprove health care provider taxes. The rule would allow CMS to find a violation in virtually any situation in which it subjectively believes that linkages exist between provider tax revenues and Medicaid payments, grants, or other monetary benefits to taxed providers.	The health care provider tax has long been a finance mechanism available to states as clarified and approved by Congress since 1991. States have used provider taxes to significantly improve the quality of, and access to, care in hospitals, nursing homes and centers for the developmentally disabled. The President's Budget did not assume any reduction in Medicaid outlays from redefining health care provider taxes and it is not clear if this proposed rule represents what was intended in the Budget.

CMS REGULATORY ACTION	CONCERN
Outpatient Hospital and Clinic – CMS seeks to reduce the amount of funding that states can pay outpatient hospitals and clinics by restricting costs that can be counted in the upper payment limit, which is the maximum a state can pay for these services.	This rule would redefine what Medicaid can reimburse under the hospital outpatient benefit to only include those services Medicare reimburses through its more restrictive definition of outpatient hospital services. It should be highlighted that Medicaid and Medicare serve hugely different populations and procedures necessary for good health for both populations are not at all interchangeable. Hospitals would not be reimbursed under the hospital Medicaid benefit for such things as: hospital based physician services; routine vision services; annual check-ups; vaccinations; school-based services; and rehabilitation services. This rule could impair access to preventive services in hospital outpatient departments and clinics and, as a consequence, result in an increased need for treatment of acute conditions in more expensive inpatient hospital settings. CMS states that, due to a lack of available data, it cannot estimate the fiscal impact of this rule, but does "not believe the proposed rule would have significant economic effects."
School Based Medicaid Services – Administration and Transportation – CMS is proposing to eliminate funding for 1) administrative activities performed by school employees or contractors or anyone under the control of a public or private educational institution, and 2) transportation from home to school and back for school-age children with an individualized education or family plan.	This rule change would end federal reimbursement for all administrative and most transportation services provided by school employees in the provision of Medicaid eligible services for children with disabilities. The provision of these services are required under federal law through the Individuals with Disabilities Education Act (IDEA). CMS estimates that this provision would reduce Medicaid expenditures by $3.6 billion over 5 years.
Rehabilitation Services – CMS seeks to clarify the definition of rehabilitative services and to determine the difference between habilitative and rehabilitative services.	The rule would redefine a lengthy list of currently eligible Medicaid rehabilitative services as no longer reimbursable and could end federal Medicaid funding for: prenatal services, rehabilitative mental health services, specialty mental health services, drug and alcohol treatments, adult day health care and even dialysis services in some states. CMS estimates that these changes would reduce Medicaid outlays by $2.3 billion over 5 years.