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November 17, 2011

The Honorable Carl Levin  
Chairman  
Senate Armed Services Committee  
United States Senate  
Washington, DC 20510

The Honorable John McCain  
Ranking Member  
Senate Armed Services Committee  
United States Senate  
Washington, DC 20510

Dear Chairman Levin and Senator McCain:

On behalf of the American Hospital Association's (AHA) 5,000 member hospitals, health care systems and other health care organizations, and 42,000 individual members, I am writing in support of language included in the Department of Defense Authorization Bill (S.1867) that will help ensure the availability of hospital care to TRICARE participants.

Specifically, Title VII, Subtitle A, Sec. 702 authorizes the secretary of the Department of Defense to maintain adequate networks of providers, including institutional, professional, and pharmacy for TRICARE recipients. The language further excludes network providers under such provider network agreements from being considered subcontractors for purposes of the Federal Acquisition Regulation or any other law.

The AHA strongly supports the inclusion of this language in S. 1867 and urges you to retain it.

The Office of Federal Contract Compliance (OFCCP) has recently taken the position that hospitals and health systems that contract with the Department of Defense to serve as TRICARE providers are federal subcontractors for purposes of Executive Order 11246. This position is contrary to the position taken by the Department of Defense, the agency charged with administering the TRICARE program.

Hospitals are currently subject to a myriad of laws and regulations, including anti-discrimination regulations that are appropriately enforced by many agencies. Subjecting hospitals to OFCCP regulations that now apply to federal contractors and subcontractors would impose additional burdensome and costly requirements that are unnecessary. At a time when hospitals are being asked to do more with less reimbursement, it makes little sense to divert financial resources from patient care in order to satisfy administrative requirements. The issue of whether a TRICARE provider is a federal subcontractor is currently being litigated. However, the continuing



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uncertainty surrounding this issue is causing hospitals with TRICARE contracts to carefully weigh whether to continue the contracts or not. As a consequence of not renewing contracts, TRICARE patients may have fewer health care options available to them. The language contained in S. 1867 will help remove the uncertainty surrounding this issue and ensure continuity of care for TRICARE patients.

Thank you for your consideration of this important issue. Again, the AHA strongly urges that the current language of Sec. 702 under Title VII, Subtitle A of S. 1867 be retained. Should you have any questions on this issue, please feel free to contact me.

Sincerely,

Rick Pollack  
Executive Vice President