BACKGROUND ON ISSUE AND LITIGATION

- On March 11, 2008, a coalition led by the National Association of Public Hospitals and Health Systems (NAPH), American Hospital Association (AHA), and the Association of American Medical Colleges (AAMC), asked the Bush Administration to stop a rule that would cut billions of dollars from Medicaid payments to hospitals, states and localities. The rule is scheduled to take effect on May 25, 2008.

- The final rule was released by the Centers for Medicare & Medicaid Services (CMS) on May 25, 2007. Majorities in both houses of Congress, governors, hospitals, and Medicaid advocates opposed the rule after it was proposed on January 18, 2007.

- Congress stopped the rule from going into effect with a one-year legislative moratorium. The moratorium was included as part of the Iraq War supplemental funding bill that was passed and signed into law on May 25, 2007. While there is strong support on Capital Hill to prevent CMS from acting, Congress has not yet extended the moratorium and time is running out.

- The rule upends decades of Medicaid payment policies established by CMS and relied upon by States.

- The rule would cut hundreds of millions of dollars in Medicaid funding to America's hospitals and other health care providers – more than $5 billion over five years.

- If enacted, the rule would decimate essential health care services provided at public hospitals that serve as a health care safety net to the most vulnerable uninsured Americans, and weaken regional trauma centers and other services that all Americans rely on in times of major emergencies.

- Through the suit filed March 11, 2008, the litigants ask the United States District Court for the District of Columbia for a preliminary injunction prohibiting CMS from implementing the rule.

- The litigants make three major claims in the lawsuit:

  1. The rule defines "units of government" far more narrowly than is permitted under law and severely restricts options for states to finance the non-federal share of their Medicaid program expenditures. The CMS definition usurps states' ability to determine the governmental status of entities within states, severely limiting the type of governmental entities that can make intergovernmental transfers to fund the non-federal share of the program

  2. CMS does not have the authority to limit Medicaid payments to public providers to cost while continuing to allow private providers to be paid under a different methodology. Congress rejected cost-based reimbursement and payment limits in the early 1980s in favor of granting states flexibility to tailor Medicaid reimbursement to their unique needs. A cost limit imposed solely on governmental hospitals is counter to clear Congressional intent and is arbitrary and capricious in violation of the Administrative Procedure Act. It also upends decades of Medicaid payment policies established by CMS and relied on by states.

  3. The moratorium signed by the President on May 25, 2007 effectively prevented CMS from issuing a final rule the same day.

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