

By: Delisi

H.C.R. No. 206

CONCURRENT RESOLUTION

1 WHEREAS, In January 2007 the Centers for Medicare and
2 Medicaid Services (CMS) proposed a new regulation that would
3 radically alter the method by which the federal government
4 determines its contribution to state Medicaid providers; if
5 implemented, this rule would threaten Texas' health care safety net
6 and jeopardize the solvency of facilities that provide crucial but
7 unprofitable services, including trauma centers, rural emergency
8 departments, university research hospitals, nursing homes, and
9 school-based clinics; and

10 WHEREAS, The proposed rule, CMS-2258-P, includes a number of
11 provisions with potentially devastating consequences to the
12 state's health care system; the rule seeks to narrow the definition
13 of a "unit of government," thereby prohibiting the care provided by
14 certain entities from being used to calculate a state's Medicaid
15 contribution, to restrict the way a state is permitted to use
16 federal matching funds, and to limit the amount a state can
17 attribute to a particular service provided under Medicaid for
18 purposes of determining the federal reimbursement; and

19 WHEREAS, Texas is particularly vulnerable to the limitations
20 of the new definition; many of the state's health care providers
21 operate under contractual agreements with the state, county
22 governments, or hospital districts, but under the new rule services
23 provided by these entities would no longer be permitted to
24 contribute to the state's share of the Medicaid program; the

1 consequence of this new limitation is most troubling for rural
2 Texas, where access to care is already inadequate; and

3 WHEREAS, Moreover, the many public hospitals in Texas that
4 perform a critical dual purpose by delivering costly, highly
5 specialized treatment such as trauma care, neonatal intensive care,
6 and burn patient care, while also providing Medicaid services to
7 the severely disabled, aged, indigent, and uninsured, depend on the
8 federal allocation under Medicaid to remain financially viable; the
9 new restriction on the use of federal matching funds proposed under
10 CMS-2258-P would jeopardize these hospitals' solvency and further
11 strain their capacity to serve as the state's health care safety net
12 while also providing essential emergency medical services to the
13 community at large; and

14 WHEREAS, Unfortunately, the ill effects of the new rule also
15 extend to non-hospital providers such as nursing homes,
16 intermediate care facilities, community health centers, and
17 school-based health clinics for which Medicaid reimbursement and
18 supplemental payments are a vital source of funding; these entities
19 are essential components of the state's health care delivery
20 system, and the loss of federal funds currently used in their
21 operation would require the state to find alternative sources,
22 shifting money from other state priorities; and

23 WHEREAS, The Texas Health and Human Services Commission
24 estimates the implementation of CMS-2258-P will cost Texas \$788
25 million annually in combined state and federal funds, not including
26 the considerable administrative costs associated with the rule's
27 new documentation and auditing requirements; and

1 WHEREAS, The potential impact of CMS-2258-P has raised broad
2 bipartisan objection to its implementation; in the 109th United
3 States Congress, 300 members of the house of representatives and 55
4 members of the senate wrote to the secretary of the United States
5 Department of Health and Human Services (HHS) with the request that
6 the agency abandon plans to approve a similar rule; and

7 WHEREAS, Since CMS-2258-P was proposed in January, a vast
8 majority of the United States Congress has once again expressed
9 opposition to adoption of the policy; likewise, states across the
10 nation have communicated their concerns about the measure, and the
11 National Governors Association has requested that the rule be
12 withdrawn; and

13 WHEREAS, The Texas Health and Human Services Commission has
14 also written the secretary of HHS to emphasize the consequences of
15 the rule to the state's health care system and to request that the
16 rule be withdrawn; given the significance of CMS-2258-P to health
17 care providers across the country, concerns of state Medicaid
18 administrators relating to the ambiguities of the rule, the
19 overwhelming bipartisan congressional opposition to its adoption,
20 and the fact that the adoption of the rule would permit CMS to
21 overstep its statutory authority as prescribed by congress, it is
22 fitting that congress intervene at this time; now, therefore, be it

23 RESOLVED, That the 80th Legislature of the State of Texas
24 hereby respectfully request the United States Congress to direct
25 the secretary of the United States Department of Health and Human
26 Services to withdraw proposed rule CMS-2258-P, published on pages
27 2236 through 2258, volume 72, number 11, of the Federal Register,

1 relating to 42 Code of Federal Regulations Parts 433, 447, and 457;
2 and, be it further

3 RESOLVED, That the Texas secretary of state forward official
4 copies of this resolution to the president of the United States, the
5 speaker of the house of representatives and the president of the
6 senate of the United States Congress, the secretary of the United
7 States Department of Health and Human Services, and all members of
8 the Texas delegation to the congress with the request that this
9 resolution be officially entered in the Congressional Record as a
10 memorial to the Congress of the United States of America.

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