



COUNTY OF SAN MATEO
Inter-Departmental Correspondence

Date: September 18, 2001

TO: Honorable Board of Supervisors

FROM: John L. Maltbie, County Manager

SUBJECT: County Manger's Report #10

1. Eliminating the Upper Payment Limit Agreement Proposed Rule

Public hospitals act as the states' safety net health providers, ensuring access to care for low-income Medicaid, working uninsured and immigrant patients. Most public hospitals experience have higher costs of care due to the fact that a large percentage of their patients have multiple and complex health problems. In recognition of the critical role and higher costs of public hospitals, the Centers for Medicare and Medicaid Services (CMS) issued a final rule in March 2001, which provides a higher (150%) Medicaid reimbursement rate to public hospitals. These "supplemental payments" are used by some states to provide a variety of non-health care services. In California, federal Medicaid funds are only used to pay for vital health care services for low-income patients.

Under current state law, San Mateo County Health Center (SMCHC) is the only public hospital in California currently unable to receive Medicaid supplemental payments. Every effort is being made to resolve this situation with the State as soon as possible, and to ensure that SMCHC begins to receive funding this year. It has been estimated that such funding will total \$6 million per year.

Recently, the Centers for Medicare and Medicaid Services (CMS) sent a draft Notice of Proposed Rulemaking (NPRM) to the Office of Management and Budget (OMB) and the Department of Health and Human Services (DHHS), recommending the elimination of the 150% upper payment limit for public hospitals. Besides the potential loss of funds to SMCHC, it has been estimated that such a change in policy would result in a loss of at least \$300 million each year to California. Clearly, this loss of funding will have profound effects on all health care providers in the state.

The NPRM is on the fast-track for expedited review by OMB and DHHS and could become effective as soon as January 2002. Reps. George Radanovich and Lois Capps are circulating a delegation letter opposing the rule change. Attached please find a copy of the delegation letter, which has been signed by both Congresswoman Anna Eshoo and Congressman Tom Lantos. For the reasons discussed above, I request your consideration of the attached resolution in support of maintaining the 150% UPL for public hospitals.

2. Last week your Board opposed identical measures, H.R. 2107 and S. 1290, that would preempt state or local law that "requires a certificate of approval or other form of approval prior to the construction or operation of an airport development projects at a covered airport..." If enacted, this legislation would preempt the County's authority to play a role in the Airport's plan for expansion under the State Aeronautics Act and strip the County of its role as a responsible agency under the California Environmental Quality Act.

S. 633, introduced by Senators Hutchison and Rockefeller, the Aviation Delay Prevention Act would among other things, require the United States Secretary of Transportation to annually review and report to the Committee on Commerce and Committee on Transportation regarding air carrier overscheduling at "large hub airports." That report would include:

- The hourly departure and arrival capacity;
- The hours when departures and arrivals at hub airports are overscheduled and the airport operates above capacity; and
- An analysis of the congestion mitigation authority of the Secretary and recommendations for providing the Secretary with additional authority to alleviate airport congestion and overscheduling and to *expedite construction related to the expansion of airport capacity*.

This measure would authorize an air carrier to file with the Secretary of Transportation a request for authority for a group of two or more carriers to discuss cooperative scheduling arrangement for the purpose of reducing overscheduling and flight delays during peak operations and for periods of inclement weather. The Secretary would have the authority to approve such agreement and to exempt such arrangements from U.S. antitrust laws if it is found to be in the public interest.

Additionally, this legislation would require the Secretary of Transportation to develop and implement "an expedited coordinated environmental review process for airport capacity-enhancement projects that:

- Provide for coordination among federal, state and local agencies concerned with the preparation of environmental impact statements or assessments under the National Environmental Policy Act of 1969;
- Expedited and coordinated process to conduct environmental and judicial reviews that ensure the reviews are done concurrently not consecutively; and
- Provide for a date certain for completing all environmental reviews.

While it would seem practicable to streamline the environmental review through a concurrent and coordinated process, it is argued that other provisions of S. 633, like H.R. 2107 and S. 1290, usurp local and state control over land use and environmental review process necessary for airport expansion projects.

Attached for your consideration is a resolution in opposition to S. 633 Aviation Delay Prevention Act.

3. In 1990, responding to the large numbers of stray and abandoned cats and dogs and the estimated 10,000 healthy, but abandoned dogs and cats that were euthanized annually by the Peninsula Humane Society, the San Mateo County Board of Supervisors enacted a moratorium on breeding dogs and cats and mandated spay/neutering of dogs and cats.

Pet overpopulation continues to present a challenge to California's local governments and according to one study costs taxpayers in excess of \$102 million annually. Under current law, pet dealers are required to provide a written statement containing standardized information about the dog or cat's health, requires that a pet dealer may not possess a dog that is less than eight weeks old; and requires pet dealers that sell dogs provide the purchaser at the time of sale a written statement of his or her rights.

Assembly Bill 1336 (Kortez) would impose a spay or neuter requirement for dogs and cats sold in pet stores.

Opponents argue that spay/neuter of puppies and kittens can cause serious problems if altered at an early age, placing dogs at risk for Parvovirus and deficiencies in bone and muscle development; and cats experience a higher tendency for developing urinary track problems.

Additionally, according to the Pet Industry Joint Advisory Council, the mandatory spay and neuter of dogs and cats sold in pet stores penalizes the industry and does not address the true source of sheltered animals; and according to the American Pet Product Manufacturers Association survey, pet stores account for 5 percent of the total cat population and 8 percent of dogs.

This measure has the support of the American Society for the Prevention of Cruelty to Animals, Animal Legislative Network, Animal Rescue Foundation, Animal Shelter Assistance Program, Association of Veterinarians for Animal Rights, Better Options for Neglected Strays (BONES), California Animal Control Directors' Association, California Lobby of Animal Welfare, the California Veterinary Medical Association (if amended), Los Angeles SPCA, San Francisco SPCA, The Ark Trust, and Spay USA.

Opposition includes Animal House, Associated Obedience Clubs of Northern California, Belmont Pets & Launder Pet, Cat and Animal Rescue Association, Cat Fanciers' Association, Inc., Pet City, National Pet Alliance, San Francisco Dog Training Club, Inc., The Animal Council and the Urban Pet Coalition.

Discussion

While this measure failed passage, reconsideration was granted. Your Board may wish to consider supporting the author's effort to increase responsibility for the number of dogs and cats that are spayed or neutered; and request an interim hearing be conducted to discuss other policies or programs that might result increased numbers of spay/neutered dogs and cats.

A resolution in support of the policy pursued Assembly Bill 1336 (Kortez) is attached for your consideration.

4. The California State Legislature is scheduled to conclude its work for the first half of the 2001-02 Legislative Session on Friday, September 14, 2001. A complete report of the final action will follow.

Dear Secretary Thompson:

We are writing in regard to changes to the upper payment limit rule that we understand the Administration may propose in the coming weeks. These changes would have a severe negative impact on our state's public hospitals, private safety net hospitals, children's hospitals and teaching hospitals. We strongly urge that the 150 percent upper payment limit for non-state public hospitals included under the current rule be maintained.

A final rule regarding the upper payment limit effectuated in March of this year, along with statutes passed by Congress under the Beneficiaries Improvement and Protection Act of 2000 (BIPA), set new limits on the maximum overall amount the federal government will pay providers for Medicaid services. The March rule and BIPA constitute a carefully crafted bipartisan compromise to eliminate the potential for abuse while permitting legitimate, long-standing programs such as California's to continue.

As you know, the March rule allows public hospitals and health systems in the aggregate to receive Medicaid payments up to 150 percent of what Medicare would otherwise pay for similar services, whereas an aggregate limit of 100 percent is applied to state-owned hospitals and private hospitals. The higher upper payment limit for public hospitals is in recognition of the special role and responsibility public hospitals have in ensuring access to care for all patients in their communities, as well as the higher costs of care associated with treating low-income populations that often have multiple and complex health problems.

We understand that the Administration is drafting a rule to eliminate the 150 percent upper payment limit for non-state public hospitals. This would undo the carefully crafted compromise already achieved on the upper payment limit program. Under the draft rule as we understand it, California's safety net hospitals would face a reduction of *at least \$300 million* in federal Medicaid funds each year. These funds are essential in order to maintain access to health services for Medicaid and low-income populations in our state.

Although the higher payment limit applies only to public hospitals, the structure of California's Medicaid program intrinsically links public and private sector hospitals. As such, a reduction in the 150 percent limit would seriously harm all safety net hospitals that receive these funds, including private safety net hospitals, children's hospital and teaching hospitals, as well as public hospitals.

We are deeply concerned about the severe negative impact of a reduction in the 150 percent upper payment limit for public hospitals. The anticipated proposed rule would threaten the financial stability of our state's health care system and its ability to provide needed health care services in our communities. We strongly urge you to uphold the delicate, bipartisan

agreement on this issue that was worked out by Congress last year and maintain the 150 percent upper payment limit for non-state hospitals.

Sincerely,

George Radanovich
Member of Congress

Lois Capps
Member of Congress

Protect California's Safety Net Hospitals! Deadline Extended: Sept. 14

September 7, 2001

Dear California Colleague:

The Centers for Medicare and Medicaid Services (CMS) are preparing to issue a rule that would cut at least \$300 million in Medicaid funding for California's safety net hospitals. These funds are essential in order to maintain access to health services for Medicaid and low-income populations in our state.

Last year CMS, then the Health Care Financing Administration, issued a draft rule to close loopholes in the existing regulations governing Medicaid Upper Payment Limits (UPL), which as the name implies limit the amount of Medicaid money a state may receive. These loopholes created a financial incentive for states to spend more on Medicaid services than necessary.

The draft rule, which was finalized on January 12, 2001, effectuated in March, and reflected changes made in the Benefits Improvement and Protection Act of 2000, established two Upper Payment Limits for Medicaid services. For most hospitals and providers the UPL is 100% of what Medicare pays for the services. But for non-state public hospitals, the UPL is 150% of Medicare's rates. This structure is designed to help safety net hospitals, for which public funding is critical, as they deliver significant amounts of uncompensated care for the underserved.

CMS is now proposing to create a uniform UPL for all hospitals and providers at 100% of Medicare's rates. This would unnecessarily jeopardize our state's medical safety net and would undo the carefully crafted compromise already achieved on the upper payment limit program.

This change is opposed by the California Healthcare Association, the American Hospital Association, the California Association of Public Hospitals and Health Systems, the National Association of Public Hospitals, the California Children's Hospital Association, the National Association of Children's Hospitals, the Catholic Health Association, the Federation of American Hospitals, the National Association of Urban Hospitals, and the Association of the American Medical Colleges.

We urge you to sign this letter to Secretary Thompson asking him to uphold the delicate, bi-partisan agreement on this issue that was worked out by Congress last year and maintain the 150 percent upper payment limit for non-state hospitals. If you would like to sign onto this letter or have questions about this issue please contact Damon Nelson at ext. 54540 (Radanovich) or Jeremy Sharp at ext. 53601 (Capps).

Sincerely

GEORGE RADANOVICH
Member of Congress

LOIS CAPPS
Member of Congress

RESOLUTION NO. _____
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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RESOLUTION IN SUPPORT OF THE CONTINUATION OF
MEDICAID UPPER PAYMENT LIMIT

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, over 44 million people living in the United States do not have insurance and must obtain their health care from a variety of "safety net" providers, including public hospitals,

WHEREAS, studies have found that many public hospitals have higher costs than other health providers, given that their low-income, under and uninsured patients typically have multiple, complex health problems that require more costly treatment;

WHEREAS, the federal government recognizes the vital services provided by public hospitals, as well as the higher operating costs that these facilities incur and has adopted a rule that provides a higher, 150 percent upper payment limit, to reimburse public hospitals for Medicaid services that they provide;

WHEREAS, the San Mateo County Health Center is working with the State Department of Health Services for equity in Medicaid reimbursements to ensure the Health Center receives the 150 percent upper payment limit which other public hospitals currently receive;

Whereas, the San Mateo County Health Center estimated that it would receive approximately \$6 million each year in additional Medicaid funds;

WHEREAS, the Centers for Medicare and Medicaid Services recently sent a draft Notice of Proposed Rulemaking to the Office of Management and Budget and the Department of Health and Human Services recommending the elimination of the 150 percent upper payment limit;

WHEREAS, that elimination would result in an estimated loss of \$300 million to the State of California and would have a profound effect on all public hospitals and health providers in the state;

NOW, THEREFORE BE IT RESOLVED that the San Mateo County Board of Supervisors opposes the proposed elimination of the 150 percent upper payment limit for public hospitals.

RESOLUTION NO. _____
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

RESOLUTION IN OPPOSITION TO S. 633 (HUTCHISON)
'AVIATION DELAY PREVENTION ACT'

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, the San Francisco International Airport is located in the County of San Mateo, causing significant traffic congestion, increased air and noise pollution;

WHEREAS, S. 633, introduced by Senators Hutchison and Rockefeller, entitled the 'Aviation Delay Prevention Act' would among other things, require the United States Secretary of Transportation to annually review and report to the Committee on Commerce and Committee on Transportation regarding air carrier overscheduling at "large hub airports," specifically hourly departure and arrival capacity and an analysis of the congestion mitigation recommendations;

WHEREAS, this measure would extend new authority to the Secretary to alleviate airport congestion and overscheduling and to expedite construction related to the expansion of airport capacity;

WHEREAS, S. 633 would require the Secretary of Transportation to develop an implement "an expedited coordinated environmental review process for airport capacity-enhancement projects that (1) provide for coordination among federal, state and local agencies concerned with the preparation of environmental impact statements or assessments under the National Environmental Policy Act of 1969, (2) expedited and coordinated process to conduct environmental and judicial reviews that ensure the reviews are done concurrently not consecutively; and (3) provide for a date certain for completing all environmental reviews;

NOW, THEREFORE BE IT RESOLVED that the San Mateo County Board of Supervisors opposes the S. 633 'Aviation Delay Prevention Act,' to ensure compliance with the provisions of both the National Environmental Policy Act and the California Environmental Quality Act California when considering an airport expansion construction project that could result in increased noise, air and water pollution and result in greater demands of limited infrastructure resources; and to ensure communities in which airports are located are able to fully review and comment on any proposed airport expansions.

RESOLUTION NO. _____
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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RESOLUTION IN SUPPORT OF ASSEMBLY BILL 1336 (KORTEZ)
PET STORE RESPONSIBILITY

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, in 1990, responding to the large numbers of stray and abandoned cats and dogs, coupled with an estimated 10,000 healthy, but abandoned dogs and cats euthanized annually by the Peninsula Humane Society, the San Mateo County Board of Supervisors enacted a moratorium on breeding dogs and cats and mandated spay/neutering of dogs and cats;

WHEREAS, pet overpopulation continues to present a challenge to California's local governments and according to one study costs taxpayers in excess of \$102 million annually;

WHEREAS, Assembly Bill 1336 (Kortez) would impose a spay or neuter requirement for dogs and cats sold in pet stores;

NOW, THEREFORE BE IT RESOLVED that the San Mateo County Board of Supervisors recognize, value and support the policy advocated by Assembly Bill 1336 to increase the number of dogs and cats are spay/neutered and request an interim hearing be conducted to identify appropriate policies to reduce the large numbers of stray and abandoned cats and dogs and reduce California taxpayer expenditures required to respond to pet overpopulation.