September 28, 2005

Ms. Karen Ignagni
President and Chief Executive Officer
America's Health Insurance Plans
601 Pennsylvania Avenue, NW
South Building, Suite 500
Washington, DC 20004

Dear Ms. Ignagni:

At the 2005 American Medical Association (AMA) Annual Meeting, the AMA House of Delegates directed the AMA to work with the Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group and the Centers for Medicare and Medicaid Services (CMS) to ensure that physicians staffing emergency departments and on-call emergency services are appropriately compensated. Further, the AMA was directed to persuade all insurers, both public and private, to pay promptly and fairly all claims for services mandated under EMTALA. Lastly, the AMA was asked to work with CMS to require all states participating in Medicaid, as a condition of continued participation, to establish and adequately fund state Emergency Medical Services' funds from which those physicians providing EMTALA-mandated services may bill and receive prompt and fair compensation.

This letter outlines many of our concerns related to the lack of adequate or delayed payment for EMTALA-mandated services. The AMA and the Federation anticipate that this letter will provide awareness to America's Health Insurance Plans (AHIP) and its constituent health plans of the problems facing physicians. We also encourage the health insurance industry to implement changes to business practices so that physicians can receive prompt and fair payment for EMTALA-mandated services and ensure that patients do not incur more financial responsibility than that required under their health insurance coverage.

Under EMTALA, hospital emergency departments, and the physicians who staff them, have a statutory duty to provide certain types of emergency care, specifically medical screenings and stabilization services, to patients who come to emergency departments without regard to the source of payment for such care. While hospital emergency departments and the physicians who staff them are generally very diligent in adhering to EMTALA mandates, health plans and other third party payers contribute to the problem by not exercising the same degree of diligence in complying with state laws that require payment for EMTALA-mandated services. When acting under state law, health plans contribute to the problem by:

- not interpreting "cover" or "coverage" to mean "reimburse" or "reimbursement;"

- not interpreting "reimbursement" to mean adequate reimbursement;

- interpreting state laws related to payment of EMTALA-mandated services as not specifically applicable to non-contracted physicians; and

- misinterpreting definitions of technical terms, such as "emergency medical condition," "screening," and "stabilization" in ways that allow health plans to unilaterally decide which services will get paid. For example, some health plans, through their interpretation of the definitions in state or federal laws, may pay physicians for mandated screenings but not pay for the often more costly stabilization treatments.

It is unfortunate that these misinterpretations of state law have contributed to the problem of physicians not receiving fair, adequate and prompt payment for EMTALA-mandated services. The AMA and the Federation urge AHIP and its constituent health plans to review their interpretations of and adjust adherence to existing state laws in accordance with legislative intent.

Beyond interpreting existing state laws in ways that they may not have been intended, health plans also employ business practices that contribute to problems related to physicians receiving prompt and adequate payment for EMTALA-mandated services. This includes the practice of health plans initially denying emergency care claims and only recognizing the services as "covered" after the patient or physician asks for reconsideration or formally appeals the denial (Mark A. Hall, JD, *The Impact of Enforcement of Prudent Layperson Laws,* Annals of Emergency Medicine, 2004). The added expense in appealing inappropriate denials of claims for emergency services further reduces the already often inadequate payment for EMTALA-mandated services.

Denying medically necessary emergency claims or claims that meet "prudent layperson" standards that are appropriately coded and submitted is a practice that causes alarm to not only physicians but also the patients who may ultimately bear the entire cost of the emergency care provided to them. The AMA and the Federation urge the health insurance industry to refrain from this practice and any other actions that add undue burden to the physician and patient in securing payment for care appropriately provided, accurately coded and correctly submitted on appropriate claim forms.

Alleviating financial difficulties can begin to address emergency department staffing shortages and hospital closings throughout the country, such as the problems that California has been facing. In the past decade more than 65 California "emergency rooms" have closed citing financial difficulty as the leading factor in the closings (California Medical Association, *A System in Continued Crisis: CMA's 4th Annual ER Losses Report*, September 2004), undoubtedly linked in no small part to reductions or lack of payment altogether for EMTALA-mandated services.

In the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), Congress recognized the pervasiveness of unreimbursed care for EMTALA-mandated services and the unfunded nature of EMTALA's mandates. The MMA was passed with provisions to appropriate funds for reimbursement of EMTALA-mandated services provided to undocumented aliens. These provisions allow for $250 million per year from fiscal years 2005 through 2008 to be allotted among all 50 states plus the District of Columbia, with more funds allotted to the six states with the most undocumented aliens. Funds from these provisions can be used to pay hospitals, certain physicians, and ambulance providers (including Indian Health Service and Tribal organizations) directly for their otherwise unreimbursed costs of providing services under EMTALA to undocumented aliens.

The federal government's acknowledgment of the lack of payment for EMTALA-mandated services should signal to AHIP and its constituent health plans that the problem warrants immediate attention. The AMA and the Federation urge AHIP and its constituent health plans to take necessary actions to

adequately address EMTALA-related payment issues and restore the access to care that patients need by helping to prevent any further closures of hospital emergency departments.

The AMA and the Federation have made EMTALA-related payment issues one of our advocacy priorities. We are committed to working with the health insurance industry, lawmakers, regulators and others to repair the damage that the lack of payment for EMTALA-mandated services has caused. We must act now, however, if we are to reverse the significant problems reverberating throughout our health care system due to lack of adequate payments from private health insurers for EMTALA-mandated services. We look forward to working with you on this critical issue.

Should AHIP or its constituent health plans have questions or wish to discuss items addressed in this correspondence, please call the office of Michael D. Maves, MD, MBA, Executive Vice President and Chief Executive Officer, AMA, at 312-464-5000.

Thank you for your attention to this matter. We encourage AHIP to share the information provided in this letter to its constituent health plans.

Sincerely,

American Academy of Family Physicians
American Academy of Neurology
American Academy of Ophthalmology
American Academy of Orthopaedic Surgeons
American Academy of Otolaryngology - Head and Neck Surgery
American Academy of Pediatrics
American Association of Clinical Urologists
American Association of Neurological Surgeons
American College of Cardiology
American College of Emergency Physicians
American College of Obstetricians and Gynecologists
American College of Osteopathic Surgeons
American College of Physicians
American College of Radiology Association
American College of Surgeons
American Medical Association
American Osteopathic Academy of Orthopedics
American Osteopathic Association
American Psychiatric Association
American Society for Surgery of the Hand
American Society of Addiction Medicine
American Society of Anesthesiologists
American Society of Bariatric Physicians
American Society of General Surgeons
American Society of Plastic Surgeons
American Urological Association
Association of American Medical Colleges
Congress of Neurological Surgeons
Infectious Diseases Society of America

National Association of Spine Specialists
Society of Hospital Medicine

Medical Association of the State of Alabama
Alaska State Medical Association
Arkansas Medical Society
California Medical Association
Colorado Medical Society
Connecticut State Medical Society
Medical Society of Delaware
Medical Society of the District of Columbia
Florida Medical Association
Idaho Medical Association
Illinois State Medical Society
Iowa Medical Society
Kansas Medical Society
Kentucky Medical Association
Maine Medical Association
MedChi, the Maryland State Medical Society
Massachusetts Medical Society
Minnesota Medical Association
Missouri State Medical Association
Montana Medical Association
Nebraska Medical Association
New Hampshire Medical Society
New Mexico Medical Society
North Carolina Medical Society
North Dakota Medical Association
Oklahoma State Medical Association
Oregon Medical Association
Tennessee Medical Association
Texas Medical Association
Utah Medical Association
Vermont Medical Society
Medical Society of Virginia
West Virginia State Medical Association