January 3, 2023

Secretary Xavier Becerra
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Administrator Chiquita Brooks-LaSure
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Admiral Rachel Levine
Assistant Secretary for Health
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: Request for waiver to apply 2023 NFPA 70, Article 517

Dear Secretary Becerra, Administrator Brooks-LaSure, and Admiral Levine:

As members of the U.S. Health Care Climate Council, we are writing to express our enthusiasm for the incentives in the Inflation Reduction Act (IRA) and their potential to significantly advance health care system efforts around decarbonization and climate resilience. However, we wish to express our concern that under the Centers for Medicaid and Medicare Services (CMS) current Conditions of Participation, some of the IRA opportunities will be inaccessible to hospitals and health systems seeking to embed decarbonization and resilience at their facilities. To quickly address this situation will require a CMS waiver that allows health systems to install clean energy microgrids as an option for backup emergency power.

President Biden issued Executive Order 14008, titled "Tackling the Climate Crisis at Home and Abroad," outlining the steps the major federal agencies will need to take to ensure their facilities, programs, and operations decarbonize and adapt to and are increasingly resilient to climate change impacts. We strongly support the need for HHS and CMS to effectively embed decarbonization, adaptation, and resilience planning and implementation throughout their facilities, operations, and programs.

With the U.S. health care sector responsible for 8.5% of the nation's emissions, we recognize our obligation and the opportunity to urgently decarbonize our health care operations and protect the public's health. Many of us on the Health Care Climate Council committed to the HHS Health Sector Climate Pledge, which includes a commitment to reducing our emissions by 50% by 2030. Clean energy microgrid systems would enable health care systems like ours to increase our resilience and reduce our operating expenses while helping to reduce our carbon footprints in line with our pledge commitments.

CMS currently requires compliance with the 2012 edition of the Life Safety Code (NFPA 101) and other referenced documents as a Condition of Participation. One referenced document is the 2011 edition of the National Electrical Code (NFPA 70, or NEC). This edition of the NEC requires every health care building to have on-site power generation for use when the utility fails. The NEC requires this emergency source to be a diesel, natural gas or propane generator, or, in some limited circumstances, batteries. Running these fossil fuel-powered generators emit carbon and other dangerous air pollutants, degrading local air quality and harming public health and the climate.

There have been advances in clean energy microgrid technologies since 2011, and the technology has been demonstrated successfully at health care systems and elsewhere.[1] Microgrids such as those constructed by Kaiser Permanente in Richmond, California, which is expected to save 2.63 MWh of energy per year and as much as $394,000 annually,[2] offer the opportunity to help health care organizations increase their resilience while reducing their operating expenses and carbon footprints.

The 2023 edition of the NEC, released in October of this year, permits the use of microgrids for emergency power generation for all health care buildings. These microgrids can use fuel cells, batteries, solar power, or any other electricity generation source. The equipment required for such systems is eligible for funding under the IRA and could replace fossil fuel generators. Although the 2023 edition of the NEC acknowledges clean energy microgrid technology advances, the CMS Condition of Participation requires adherence to the 2011 edition of the NEC.

Therefore, CMS-referenced regulations do not permit clean energy microgrid systems to be installed in place of fossil fuel-powered generators at private health care facilities for emergency backup power generation. As a result, even though a clean energy microgrid system can be used at a hospital to offset electricity from the utility, the 2011 version of the NEC referenced in the CMS Condition of Participation still requires the health system to operate a fossil fuel-powered emergency generator alongside the clean energy microgrid.

While CMS may be in the process of updating the referenced building codes, it is unlikely that it will happen within the next two years, delaying the implementation of clean energy microgrid technologies and allowing the continuation of carbon emissions and air pollution from these fossil fuel-powered generators. Numerous studies have found that eliminating fossil fuel pollution in the U.S. could save lives and reduce costs, with air quality improvements over time substantially offsetting or exceeding the costs of climate change mitigation. A recent study found that eliminating air pollution caused by burning

[1] https://betterbuildingssolutioncenter.energy.gov/implementation-models/kaiser-permanente-pioneers-californias-first-medical-center-microgrid

[2] https://www.cleanegroup.org/ceg-resources/resource/resilient-cooling-centers/

fossil fuels would prevent more than 50,000 premature deaths and provide more than $600 billion in health benefits in the United States every year.[3]

CMS has the power to issue a waiver to its requirements. Specifically, 42 CFR 482.41(b)(2) provides:

> "In consideration of a recommendation by the State survey agency or Accrediting Organization or at the discretion of the Secretary, may waive, for periods deemed appropriate, specific provisions of the Life Safety Code, which would result in unreasonable hardship upon a hospital, but only if the waiver will not adversely affect the health and safety of the patients."[4]

Issuing the waiver to allow the adoption of Article 517 of NFPA 70-2023 will prevent unreasonable financial hardship upon a hospital by enabling hospitals to leverage IRA funds to invest in decarbonizing their health care operations. The waiver would allow hospitals to adopt clean energy microgrid technologies for emergency power generation that are better for our health and our environment and, as the case study from Kaiser Permanente shows, are more affordable for health systems. In fact, federal hospitals are already allowed the flexibility to install renewable microgrids. By not allowing private hospitals this same opportunity, CMS is constricting our ability to build resilience to climate impacts, save money, and reduce climate-destabilizing emissions. Granting this waiver will not adversely affect the health and safety of patients. Instead, it will help improve the health and safety of local communities by allowing health systems to reduce both climate emissions and localized air pollution. Furthermore, it is consistent with CMS statutory authority and in compliance with the President's Executive Order 14008.

As Health Care Climate Council members, we have found that our firm commitments to climate-smart health care yield a significant return on investment in terms of financial savings, employee retention and satisfaction, and improvements in patient outcomes. We request that CMS issue a waiver without delay, recognizing Article 517 of the 2023 NEC as an acceptable alternative to Article 517 of the currently required edition. This change will support health sector decarbonization and climate resilience.

Health care is at the frontline of climate change, bearing both the financial costs and human health burden from increased disease spread and more frequent extreme weather events and wildfires. If we do not act quickly, climate change threatens to undo the public health achievements of the twentieth century and disrupt health care operations across the country. With suitable investments, the sector is poised to lead in promoting equitable and healthy climate solutions. We are ready to share best practices and support the administration in its commitment to decarbonizing our health care system and ensuring that our facilities and communities are climate-resilient.

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[3] https://agupubs.onlinelibrary.wiley.com/doi/10.1029/2022GH000603

[4] https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-G/part-482.

Sincerely,

The U.S. Health Care Climate Council

The **U.S. Health Care Climate Council** is a leadership body of 20 health systems representing over 600 hospitals and 10,000 health centers in 43 states, with more than 1.3 million employees serving over 81 million patients annually. Health Care Climate Council members are committed to protecting our patients and employees from the health impacts of climate change and becoming anchors for resilient communities. Health Care Climate Council members implement innovative climate solutions, inspire and support others to act, and use our trusted voice and purchasing power to move policy and markets to drive the transformation to climate-smart health care.

Cc:
Elizabeth Fowler, Deputy Administrator and Director, CMMI
John Balbus, Interim Director, Office of Climate Change and Health Equity, OASH
Arsenio Mataka, Senior Advisor on Climate Change and Health Equity, OASH