CAHHS **Unemployment Insurance Division**

May 22,2002

Mr. John Morrall
Office of Information and Regulatory Affairs
Office of Management and Budget, NEOB, Room 10235
725 17th Street, NW
Washington, D.C. 20503.

Dear Mr. Morrall:

The California Association of Hospitals and Health Systems, Unemployment Insurance Division, representing over 600 hospitals/healthcare employers, respectfully urges the Office of Management and Budget to support rescission of the Birth and Adoption Unemployment Compensation (BAA-UC) rule promulgated by the Department of Labor in 1999. The BAA-UC regulations authorize states to withdraw funds from their unemployment insurance (UI) trust accounts to compensate employed workers who take leave following the birth or adoption of a child.

By diverting UI trust funds for paid leave, BAA-UC *is* clearly contrary to Congress's intent under both the Federal Unemployment Tax Act and the Family and Medical Leave Act. Paid leave as authorized under the BAA-UC regulations is not unemployment insurance. Workers who take leave are not "unemployed." Their employers have work for them, but these individuals are not available for work.

BAA-UC will hurt workers and employers by putting the safety net for unemployed workers at **risk** by inviting states to spend down their unemployment insurance reserves for the entirely unrelated purpose of compensating leave takers. State UI trust fund reserves are needed to assure that funds are available to pay unemployment compensation to jobless workers while they seek new work and to protect against the adverse economic consequences of payroll tax increases needed to finance unemployment benefits.

State UI trust fund reserves are drawn down quickly when the economic cycle turns. Several states, including New York and Texas, have already needed federal loans to pay their UI benefits. In these and many other states, payroll tax increases are/will be imposed on employers to replenish UI trust funds. Moreover, using UI trust funds for paid leave puts the federal budget itself at significant risk, because the federal government is the financial guarantor for state UI benefits.

A legal challenge to BAA-UC is currently pending in the United States District Court for the District of Columbia. The case is LPA, Inc. v. Herman (No. 00-01505PLF). The plaintiffs contend that the BAA-UC rule violates the Federal Unemployment Tax Act and the Family and Medical Leave Act. During the Clinton Administration, DOL asked the court to dismiss this lawsuit because no state has enacted a UI-paid leave law. There has been no decision yet on the motion to dismiss or the underlying merits of the case. As a result, UI-paid leave proposals are now under active consideration in New Jersey and other states. It is extremely important that the BAA-UC rule be rescinded before any state enacts a "Baby UI" statute. The judicial system will need years to resolve this issue. In the interim, the continued existence of the BAA-UC regulations as final rules fosters unhealthy interest in "raiding" UI trust funds.

We encourage dialogue on positive ways to encourage financial support for parents who take leave following the birth or adoption of a child. However, the misuse of the unemployment insurance program for this unrelated purpose is unwise and unworkable. We therefore respectfully urge OMB to recommend that the BAA-UC rule be rescinded, and to urge DOL to begin the rulemaking process to accomplish this objective as soon as possible.

Sincerely,

Charles O. Howarth
Senior Vice President

COH/jh