September 27, 2019

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 314-G
Washington, D.C. 20201

***SUBJECT: CMS-1717-P, Medicare Program: Proposed Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Proposed Revisions of Organ Procurement Organizations Conditions of Coverage; Proposed Prior Authorization Process and Requirements for Certain Covered Outpatient Department Services; Potential Changes to the Laboratory Date of Service Policy; Proposed Changes to Grandfathered Children's Hospitals-Within-Hospitals; Proposed Rule, Federal Register (Vol. 84, No.154), August 9, 2019***

Dear Administrator Verma:

On behalf of California's public health care systems, the California Association of Public Hospitals and Health Systems (CAPH) appreciates the opportunity to submit comments on the calendar year (CY) 2020 Outpatient Prospective Payment System (OPPS) proposed rule. We are deeply concerned about provisions of the proposed rule related to the posting of negotiated charges and Part B payment cuts to 340B hospitals and their negative impact on safety net hospitals.

CAPH represents California's 21 county-owned and -operated or county-affiliated public health care systems and the University of California medical centers who deliver care to all who need it, regardless of ability to pay or circumstance. As core safety-net providers to California's low-income population, each year public health care systems serve 2.85 million Californians and provide over 10 million outpatient care visits.

We are concerned that the agency's proposals regarding the public posting of charges, in particular the posting of negotiated rates, offer little benefit to the consumer, add substantial burden to hospitals, and pose harm to competition, potentially driving up prices. In addition, we oppose the Centers for Medicare & Medicaid Services' (CMS) proposed continuation of the 340B payment cuts. We urge the agency to revert to paying 340B hospitals at 106 percent of Average Sales Price (ASP) and repay hospitals at the full statutory default rate of ASP plus six percent for the years the policy has been in effect.

*We offer these comments to echo and support the more detailed comments submitted by our partners, the California Hospital Association and America's Essential Hospitals.*

1. **CMS should withdraw its proposals for the posting of payer-specific negotiated charges.**

In the CY 2020 OPPS proposed rule, CMS proposes to require that hospitals publicly post on the internet a machine-readable file containing both gross charges and "payer-specific negotiated charges" for all items and services. It also proposes to require hospitals to display, in an easy-to-understand format, negotiated charges and certain other information for 300 "shoppable" items and services.

CAPH strongly supports transparency and CMS efforts to ensure patients have access to vital information to make informed decisions about their care. However, we oppose policies for the public posting of payer-specific negotiated rates. The agency's approach to price transparency would not provide the information patients need and want related to potential out-of-pocket cost or other coverage obligations. Further, this approach could severely disrupt contract negotiations between providers and health plans, and exceeds the administration's legal authority. We urge CMS to abandon this proposal and instead convene providers, health plans, patients, and other stakeholders on alternative approaches to meet patient needs.

2. **CMS should reverse Part B payment cuts to 340B hospitals and repay hospitals at the full statutory default rate for the years the policy has been in effect.**

In the CY 2018 OPPS final rule, CMS adopted a policy to pay for separately payable drugs acquired through the 340B program at ASP minus 22.5 percent, instead of ASP plus 6 percent. These cuts are the subject of an ongoing lawsuit. In the two years since CMS first proposed this sweeping policy change, the agency has yet to demonstrate that the policy lowers drug prices, financially helps beneficiaries, or improves access to or quality of care for Medicare beneficiaries. Nevertheless, for 2020, CMS proposes to continue to pay ASP minus 22.5 percent for 340B-acquired drugs under the OPPS. CAPH opposes CMS' proposed continuation of the 340B payment cuts, which are detrimental to hospitals and their patients.

In the proposed rule, CMS addresses the ongoing lawsuit (*American Hospital Association et al. v. Azar et al.)* regarding the legality of its 2018 policy. CMS seeks public comment on potential remedies for restoring the CY 2018 and CY 2019 payment cuts, and for CY 2020 use in the event the agency receives an adverse ruling by the U.S. Court of Appeals. We urge CMS to propose a remedy to repay hospitals at the full statutory default rate of ASP plus 6 percent for the years the policy has been in effect.

Thank you for the opportunity to submit comments.

Sincerely,

Jackie Bender
Vice President of Policy