October 5, 2020

The Honorable Seema Verma  
Administrator  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

RE: CMS–1736–P; Medicare Program; Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; New Categories of Hospital Outpatient Department Prior Authorization Process; Clinical Laboratory Fee Schedule: Laboratory Date of Service Policy; Overall Hospital Quality Star Rating Methodology; and Physician-owned Hospitals

Dear Administrator Verma:

The Connecticut Hospital Association (CHA) is a not-for-profit membership organization that represents hospitals and health-related organizations. With more than 90 members, CHA’s mission is to advance the health of individuals and communities by leading, representing, and serving hospitals and healthcare providers across the continuum of care that are accountable to the community and committed to health improvement.

We appreciate the opportunity to comment on the Calendar Year (CY) 2021 Outpatient Prospective Payment System Proposed Rule (OPPS Proposed Rule). Specifically, we encourage you to consider our comments opposing the continuation of CMS’s policy to underpay for separately payable drugs and biologicals acquired under the 340B program and concerning the Hospital Wage Index Proposal.

340B Drug Payment Policy

The assistance made possible by the 340B program is felt by communities across our state, but is especially important to some of our largest urban centers like Bridgeport, Hartford, New Haven, Stamford, and Waterbury. The health inequity across our country, laid bare by the uneven impact COVID-19 has had on our communities, reinforces the ongoing need for the investments 340B savings allow.

Unfortunately, CMS’s policy, first finalized in 2018, to adopt significantly deficient OPPS reimbursement for drugs acquired under the 340B program, undermines the program and its statutory intent to stretch scarce federal resources as far as possible.

As such, CHA opposes the CY 2021 OPPS Proposed Rule policy to deepen the reimbursement reduction for drugs acquired under the 340B program to a net payment of Average Sales Price (ASP) minus 28.7 percent. These 340B hospitals are already struggling to recover from the COVID-19 pandemic, while providing care for a population with a disproportionate need and limited ability to afford services. An additional, significant payment reduction will compound the financial stress experienced by hospitals across our state and potentially threaten care access to those who need it most.
Moreover, we continue to believe that CMS does not have the legal authority to impose these arbitrary reductions. We support the American Hospital Association’s (AHA) ongoing litigation, dating to the imposition of the 2018 cuts, and urge CMS to suspend the reductions while the case remains under consideration by the courts.

Finally, CMS’s FY 2021 340B proposed payment policy is predicated on a flawed and rushed acquisition cost survey that CMS inexplicably conducted between April 24 and May 15, 2020, the height of the COVID-19 pandemic in our state. It is no surprise that, of the 1,422 340B hospitals surveyed nationally, nearly 40 percent did not respond.

Despite statutory language requiring CMS to conduct a survey with “...... a large sample of hospitals that is sufficient to generate a statistically significant estimate of the average hospital acquisition cost for each specified covered outpatient drug,” CMS proposes to move ahead with survey results that do not meet the statutory test.

**For all of the reasons stated, CMS should withdraw its proposed payment policy and revert to the pre-2018 payment policy of reimbursing all separately payable drugs and biologicals under the OPPS at ASP plus six percent.**

**Calendar Year 2020 Hospital Wage-Index Proposals**

As we noted in our comment letter to the Fiscal Year 2021 Inpatient Prospective Payment System Proposed Rule, in FY 2020 CMS made a number of significant changes to the wage index with which CHA expressed significant concern, including CMS’s policy to implement such proposals in a budget-neutral manner and the imposition of an inappropriately brief transition period. As part of that change, CMS adopted a one-year transition policy that limited wage index reductions to no more than five percent.

For FY 2021, CMS extended the one-year transition policy that limits wage index reductions for these policies to no more than five percent.

**As CMS is proposing to adopt the final IPPS wage index provisions for use in the CY 2021 OPPS, CHA restates our request that CMS make permanent its policy that limits any wage index reductions to no more than 5 percent from year to year.** Adopting a permanent policy will afford all hospitals the time needed to absorb changes in funding due to significant wage index reductions.

Thank you for the opportunity to comment on these proposed policies and we appreciate your consideration.

Sincerely,

Paul Kidwell  
Senior Vice President, Policy  

PK:llj  
By e-mail