

WISCONSIN HOSPITAL ASSOCIATION, INC.

September 24, 2018

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201



Re: Opposition to proposed cuts in the 2019 OPPS Rule

As leaders of hospitals across the state of Wisconsin, we are concerned with the proposal to reduce payments for Evaluation and Management services provided in previously excepted off-campus provider-based departments of a hospital (PBD's). Citing "unnecessary" increases in the volume of clinic visits in hospital PBDs, CMS proposes to pay for visits furnished in excepted off-campus PBDs at the same rate they are paid in non-excepted off-campus PBDs. Specifically, CMS proposes to pay for clinic visit (i.e., evaluation and management) services in excepted PBDs at the "PFS-equivalent" payment rate of 40 percent of the OPPS payment amount. The agency would implement this proposal in a non-budget neutral manner, which means that it is estimated to cut hospital payments under the OPPS by \$760 million in CY 2019 alone. In Wisconsin, preliminary estimates suggest this could impact around 40 hospitals to the tune of \$30 million next year alone, with the impact climbing to \$440 million over the course of the next 10 years.

As CMS should know, Section 603 of the Bipartisan Budget Act of 2015, explicitly exempted PBDs in operation prior to November 2, 2015 from "site-neutral" payment provisions. Additionally, the 21st Century Cures Act which was signed into law in December of 2016 further grandfathered facilities that were in mid-build. We believe it was Congress's intent to leave these existing facilities to operate under their current payment system, and that changing the rules mid-stream for existing facilities is arbitrary and unjust.

Further, this rule unfairly impacts a small number of facilities in Wisconsin and across the country, most of whom are safety net organizations, and have made substantial investments to meet the needs of their unique patient populations that regularly present with complex needs. If this payment rule is finalized, some of our hospitals will have only a few months to plan for potentially millions in losses. Much like the 2018 OPPS rule that reduced payments to Wisconsin hospitals by an estimated \$40 million last year, this rule would pull the rug out from under hospitals that have planned for this revenue, leaving instability in its wake.

While we respect CMS's desire to have equal payments for equal services, regardless of the setting, we believe a more thoughtful approach is warranted. For instance, this policy does not take into account the fact that provider-based departments have additional inspection and regulation requirements which independent clinics do not. It also does not recognize the history of hospital funding under Medicare, and the fact that as hospitals have improved, more services have gone from the inpatient setting to the outpatient setting. The extra payments to hospitals in the outpatient setting help hospitals offset losses from reduced inpatient revenue, which in the Medicare program are approaching \$2 billion annually for Wisconsin hospitals.

Additionally, the additional payment takes into consideration the fact that hospitals run Emergency Departments that must be staffed with skilled practitioners 24 hours a day, 7 days a week. Hospitals also must serve anyone who walks in their emergency room doors, regardless of their ability to pay, due to federal Emergency Medical Treatment And Labor Act (EMTALA). These are all higher costs hospitals incur that clinics paid under the physician fee schedule do not, and some hospitals have built in the anticipated revenue from PBDs into their budgets to offset Medicare and Medicaid losses from those higher costs. While we are entirely willing to engage in productive discussions with CMS that move Medicare's payment system to one that more accurately reflects actual costs, incentivizes better value, and treats all providers equally, this should be done in a thoughtful manner that gives all parties the opportunity to plan for their future budgets.

As an alternative, we recommend CMS form an initiative similar to their "Patients Over Paperwork" initiative that invites hospitals to be partners in developing new ways to modernize Medicare's antiquated payment system. In the meantime, CMS should abandon this proposal and respect the wishes of Congress.

Sincerely,



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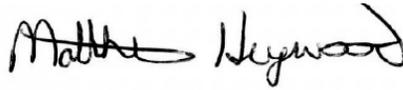
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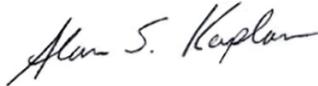
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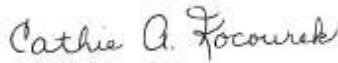
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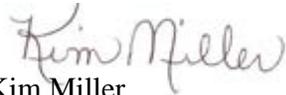
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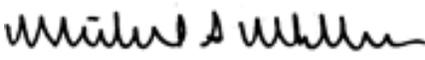
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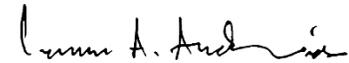
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