

September 26, 2019

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

**Re: Calendar Year 2020 Outpatient Prospective Payment System Proposed Rule**

Dear Administrator Verma:

The Center for Health Affairs is a nonprofit hospital association representing 36 hospitals across nine counties Northeast Ohio. For more than a century, The Center has advocated for policies to eliminate barriers to healthcare, improve the quality of services delivered, and reduce the costs associated with the delivery of care.

We appreciate the opportunity to submit comments on behalf of our hospital members regarding the calendar year (CY) 2020 outpatient prospective payment system (OPPS) proposed rule. In its current form, the proposed rule contains several provisions that are problematic for hospitals.

**Price Transparency**

Hospitals in Northeast Ohio are deeply committed to ensuring patients have the information needed to make informed decisions about their care. This includes timely, accurate information about their out-of-pocket costs. However, we have significant concerns with the provisions of the proposed rule requiring hospitals to publicly post not only gross charges but payer-specific negotiated charges for all services, as well as negotiated charges for 300 “shoppable” bundles of services.

First and foremost, the approach taken in the proposed rule does not serve its presumed primary goal of helping patients understand their costs and in fact, would only cause further confusion for patients. The posting of payer-specific negotiated rates does not inform patients about their out-of-pocket obligations.

At the same time, the rule would severely disrupt contract negotiations between providers and health plans. The charges negotiated between hospitals and health plans are confidential trade secrets and their disclosure would unduly burden hospitals’ ability to enter into competitive contracts. The disclosure requirements threaten competition and in fact, the Federal Trade Commission (FTC) has warned numerous times against the disclosure of competitively sensitive information, such as payer-negotiated prices. The FTC has urged that transparency be limited to predicted out-of-pocket expenses, co-pays, and quality and performance comparisons of plans or providers.

Finally, we have significant operational concerns with this proposal and the excessive burden it would place on hospitals. Complying with these requirements – identifying the 300 shoppable services and their corresponding ancillary services, collating the charge data, creating a consumer-friendly website and posting this information online – would require time and resources far exceeding the 12 hours CMS has estimated.

We urge CMS to eliminate these requirements and instead take steps to facilitate the development and voluntary adoption of patient cost-estimator tools and resources by convening stakeholders to identify best practices, recommending standards for common features of cost-estimator tools, and developing solutions to common technical barriers.

### **340B Drug Pricing Program**

The proposed rule includes provisions extending the nearly 30% cut in prices for drugs purchased under the 340B drug pricing program. This program allows participating hospitals to stretch limited federal resources to reduce the price of outpatient pharmaceuticals for patients and expand health services to the patients and communities they serve. Hospitals use 340B savings to provide free care for uninsured patients, offer free vaccines, provide services in mental health clinics, and implement medication management and community health programs. The continuation of these cuts will have a direct negative impact on hospitals caring for the most vulnerable patients. It is vitally important to restore and preserve funding under the 340B program, which is utilized by many hospitals in Northeast Ohio.

### **Payments for Off-Campus Hospital Outpatient Departments**

It has been the position of The Center for Health Affairs that the application of site-neutral payments to grandfathered off-campus hospital outpatient departments (HOPDs) is in direct conflict with congressional intent as articulated under the Bipartisan Budget Act of 2015 and the 21<sup>st</sup> Century Cures Act. In light of the recent decision by U.S. District Court Judge Rosemary Collyer, The Center hopes CMS will reverse this policy and work toward a remedy to restore funding to hospitals lost under the policy since its implementation on Jan. 1.

On behalf of our member hospitals and the Northeast Ohio communities they serve, we sincerely appreciate your consideration of our concerns regarding the CY 2020 proposed OPSS rule. We hope to continue working with CMS on our shared goal of managing costs while at the same time ensuring access to quality healthcare for all Americans.

Sincerely,

A handwritten signature in black ink, appearing to read "B. G. Lane". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Brian G. Lane  
President & CEO