CALIFORNIA HOSPITAL ASSOCIATION

Providing Leadership in Health Policy and Advocacy

June 17, 2019

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

SUBJECT: CMS–1712–P, Medicare Program; FY 2020 Inpatient Psychiatric Facilities Prospective Payment System and Quality Reporting Updates for Fiscal Year Beginning October 1, 2019 (FY 2020); Proposed Rule, Federal Register (Vol. 84, No. 78), April 23, 2019

Dear Administrator Verma:

On behalf of our more than 400 member hospitals and health systems — including 82 hospitals subject to the inpatient psychiatric facility (IPF) prospective payment system (PPS) — the California Hospital Association (CHA) appreciates the opportunity to submit comments on the Centers for Medicare & Medicaid Services' (CMS) proposed payment and quality provisions for federal fiscal year (FFY) 2020. California hospitals providing acute psychiatric inpatient care are committed to the delivery of responsive, accountable, and clinically effective prevention, treatment, and care for children, adolescents, and adults with mental and substance use disorders.

AREA WAGE INDEX ADJUSTMENT

For FFY 2020, CMS proposes to change the current IPF wage index methodology to align the IPF PPS wage index with the same wage data time frame used by the inpatient prospective payment system (IPPS). Specifically, CMS proposes to eliminate the current one-year lag in wage index data by using the concurrent fiscal year's pre-rural floor, pre-reclassified IPPS wage index for the IPF PPS wage index. Under this proposal, the FFY 2020 IPF wage index would be based on the FFY 2020 pre-floor, pre-reclassified IPPS hospital wage index rather than FFY 2019. CMS proposes to implement this proposal in a budget-neutral manner.

As part of the FFY 2020 IPPS proposed rule, CMS verified the Worksheet S-3 wage data by instructing its MACs to revise or verify data elements that result in "specific edits failures." (84 Fed. Reg. at 19375.) CMS excluded 81 providers with "aberrant" data and, most notably, excluded eight (now seven) hospitals that are all part of the same health system. CMS claims this is due to the current private business practice whereby, according to CMS, the health system in recent years negotiated its labor contracts with unions on a regional basis in California and that, as a result, the salaries within each region "are the same regardless of prevailing labor market conditions in the area in which the hospital is located."

CMS states that it proposes to exclude the seven hospitals because it does not believe the average hourly wages of the hospitals accurately reflect the economic conditions in their respective labor market

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areas (e.g. the core-based statistical areas (CBSAs)). Additionally, CMS asserts that inclusion of these data would distort the comparison of the average hourly wage of each of these hospitals' labor market areas to the national average hourly wage.

CMS argues that, under section 1886(d)(3)(E) of the Social Security Act (42 U.S.C. § 1395ww(d)(3)(E) ("Section 1395ww(d)(3)(E)"))— the statute that requires the Secretary to establish a wage index reflecting the relative hospital wage level in the geographic area of a hospital compared to the national average hospital wage level —it has the discretion to remove hospital data from the wage index that does not reflect the relative hospital wage level in the hospital's geographic area. Although CMS does not say it overtly, it alludes that the seven hospitals' wage data are high compared to their labor market areas. Most concerning, CMS says it is considering removing all 38 hospitals that are part of the health system from the wage index calculations in FFY 2021, "not because they are failing edits due to inaccuracy, but because of the uniqueness of this chain of hospitals, in particular, the fact that the salaries of their employees are not based on local labor market rates." 84 Fed. Reg. at 19376.

CHA does not oppose CMS' proposal to eliminate the one-year lag wage index data. However, CHA strongly opposes the use of the current FFY 2020 wage index data under consideration in the FFY 2020 IPPS proposed rule and released as a public use file on April 30. **CHA strongly opposes the exclusion of these hospitals as it will have devastating consequences for IPFs in California.**

We urge CMS to carefully review CHA's FFY 2020 IPPS comments, where we outline in detail our **concerns and objections to the proposed exclusion of the seven hospitals in the FFY 2020 public use file. As discussed below, the exclusion of the seven hospitals would be unlawful for at least five critical reasons:**

1. Nothing in the applicable statute, Section 1395ww(d)(3)(E), permits CMS to exclude general acute care hospitals from the wage index data simply because those hospitals' wages are higher than the wages of other hospitals in their area, or because the hospitals are part of a system that negotiates regional or statewide labor contracts. Rather, as indicated by CMS in past rulemakings, the wages of all short-term acute care hospitals must be included unless such data are incomplete or inaccurate.

2. Even if CMS had authority to exclude certain hospitals even though their data were accurate and verifiable (as is the case with the seven hospitals), the exclusion of the seven hospitals would be an arbitrary and capricious as CMS has promulgated no standards to govern the exercise of its discretion. CMS has established an extensive process to ensure the accuracy and reliability of hospital wage data — yet, where it does not like the result, it has decided to deviate from this process by excluding hospitals with accurate data.

3. CMS' exclusion of the seven hospitals is procedurally improper, as CMS has failed to promulgate a rule in accordance with the APA that would authorize the exclusion of hospitals with aberrant data or to set forth the standards to be applied in determining whether data are aberrant.

4. CMS has failed to consider the relevant factors and has relied on factors that are not relevant under the applicable statute. As a result, its action is arbitrary and capricious.

5. CMS' basis for excluding the health system hospitals is inconsistent with federal labor law because it interferes with collective bargaining.

Changes resulting from the health system hospital exclusions from the area wage index calculation are untenable and must be reversed in both the IPPS adjusted and unadjusted area wage index. Moreover, CMS' threat to exclude all seven hospitals in FFY 2021 is completely untethered from the relevant statute and is unsupportable. Further, the proposed exclusions for FFY 2020 will cause significant harm to not only IPPS hospitals, but also IPFs, skilled-nursing facilities (SNFs), inpatient rehabilitation hospitals (IRFs), and many others. These consequences impacting more than the IPPS hospitals appear to be unintended by CMS, as it failed to even consider them in its regulatory fiscal impact analysis in the proposed rule as it is legally required to do. Thus, the exclusions are legally impermissible.

CHA estimates the exclusion of the seven hospitals in FFY 2020 will have an estimated range of impact on the unadjusted area wage index from negative 3% to negative 10%, as follows:

CBSA #	CBSA Name	Unadjusted AWI WITHOUT Health System (Proposed)	Unadjusted AWI WITH Health System	Impact %
11244	Anaheim-Santa Ana-Irvine, CA	1.1953	1.2338	-3.22%
23420	Fresno, CA	1.0662	1.1477	-7.64%
40140	Riverside-San Bernardino-Ontario, CA	1.1313	1.1903	-5.22%
41740	San Diego-Carlsbad, CA	1.1982	1.2256	-2.29%
44700	Stockton-Lodi, CA	1.3639	1.5012	-10.07%

CHA estimates there are 29 IPF PPS facilities and units in the affected CBSAs; they will experience a loss of more than $3 million, jeopardizing care for the vulnerable populations they serve.

INPATIENT PSYCHIATRIC FACILITY QUALITY REPORTING PROGRAM

CMS proposes one additional measure, *Medication Continuation following Discharge from an IPF (NFQ #3205),* for the FFY 2021 payment determination and subsequent years. The measure uses Medicare fee-for-service claims to identify whether patients admitted to IPFs with diagnoses of major depressive disorder, schizophrenia, or bipolar disorder had filled at least one evidence-based medication within two days prior to discharge through 30 days post-discharge.

CHA agrees that adherence to medication is important to improving outcomes, particularly in the psychiatric patient population where psychotropic medication discontinuation can have a range of adverse effects. CMS originally proposed the measure in its FFY 2018 IPPS proposed rule, but in response to concerns from CHA and other stakeholders on the burden and usefulness of the measure, did not finalize its proposal. CHA appreciates the steps CMS has since taken — as part of its Meaningful Measure Initiative — to reduce the reporting burden on IPFs. We also appreciate the inclusion of a claims-based measure that further limits reporting burden on IPFs. While we continue to have concerns that the measure's limited patient population of Medicare beneficiaries, who often lack many of the medication access issues typical of the broader psychiatric patient population, limits the measure's usefulness in driving quality improvement, we do not oppose the addition of the measure for FFY 2021.

CHA appreciates the opportunity to share our comments on these important issues. If you have any questions, please do not hesitate to contact me at (202) 488-4688 or akeefe@calhospital.org, or Megan Howard, senior policy analyst, at (202) 488-3742 or mhoward@calhospital.org.

Sincerely,

/s/
Alyssa Keefe
Vice President, Federal Regulatory Affairs