



November 27, 2024

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Ave., SW
Washington, D.C. 20201

SUBJECT: CMS-1808-IFC, Medicare Program; Changes to the Fiscal Year 2025 Hospital Inpatient Prospective Payment System (IPPS) Rates Due to Court Decision; Interim Final Rule, Federal Register (Vol. 89, No. 192), October 3, 2024

Dear Administrator Brooks-LaSure:

On behalf of more than 400 hospitals and health systems, the California Hospital Association (CHA) is submitting comments on the Centers for Medicare & Medicaid Services (CMS) inpatient prospective payment system (IPPS) interim final rule (IFR) that eliminates the low wage index hospital policy for federal fiscal year (FFY) 2025.

CHA strongly supports the elimination of the low wage index policy and associated budget neutrality adjustment in response to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) decision in *Bridgeport Hospital, et al., v. Becerra (Bridgeport)*. CHA has long contended that this policy violates the Medicare statute¹. This policy has disproportionately impacted California's hospitals, resulting in approximately \$120 million in payment cuts since the policy was first implemented in FFY 2020. Hospitals in California pay the highest wages in the nation, reflecting the high cost of living throughout the state. Recently, state law established a first-of-its-kind health care minimum wage² of \$25 per hour that will be fully phased in across the state — including the most rural communities — by 2028. While CHA understands the concerns raised by disparities between wage index values for high and low wage index hospitals, California's hospitals should not be forced to fund this misguided policy via a budget neutrality adjustment.

CHA appreciates that CMS has finalized a transition policy for hospitals significantly impacted by the removal of the FFY 2025 low wage index hospital policy that is not budget neutral. CHA agrees that Section 1886(d)(5)(I) does not require a budget neutrality adjustment. Rather, Section 1886(d)(5)(I) permits a budget neutrality payment only with respect to outlier adjustments. As the agency contemplates a remedy in response to the *Bridgeport* decision, CMS should exercise its discretion under

¹ See CHA comments in response to FFY 2020, FFY 2021, FFY 2022, FFY 2023, and FFY 2024 IPPS proposed rules

² <https://www.dir.ca.gov/iwc/MW-2024-HC-SUPPLEMENT.pdf>

Section 1886(d)(5)(l) of the Social Security Act and implement a policy that is not budget neutralized and ensure low wage index hospitals are not subject to clawbacks if CMS takes the view that it would otherwise be required to claw back funds already paid to low wage index hospitals.

Finally, CHA urges CMS to clarify that the low wage index policy is eliminated in future years in the FFY 2026 IPPS proposed rule. Prior to the publication of the IFR, in the FFY 2025 IPPS final rule, CMS finalized the low wage index policy for three more years through FFY 2027. However, the IFR is silent on CMS' policy in those subsequent years.

If you have any questions, please contact me at mhoward@calhospital.org or (202) 488-3742.

Sincerely,

/s/

Megan Howard
Vice President, Federal Policy