



June 17, 2022

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
Hubert H. Humphrey Building  
200 Independence Avenue, S.W.  
Room 445-G  
Washington, DC 20201

***RE: CMS-1771-P, Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Proposed Policy Changes and Fiscal Year 2023 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Costs Incurred for Qualified and Non-qualified Deferred Compensation Plans; and Changes to Hospital and Critical Access Hospital Conditions of Participation: Proposed Rule (Vol. 87, No. 90), May 10, 2022.***

Dear Administrator Brooks-LaSure:

On behalf of Colorado Hospital Association (CHA) and its 100+ member hospitals and health systems, I appreciate the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) hospital inpatient prospective payment system (IPPS) proposed rule for fiscal year (FY) 2023. CHA has significant concerns over the proposed payment update for IPPS hospitals for FY 2023, which, together with the agency's proposed cuts to DSH payments and the dramatic increase in the proposed high-cost outlier threshold, would result in a net *decrease* in payments to IPPS hospitals in FY 2023 compared to FY 2022. A net decrease in IPPS payments will make it more difficult for Colorado hospitals to provide equitable access to care, ensure an adequate workforce, and respond to future surges of COVID-19. In order to ensure that Medicare payments for acute care services more accurately reflect the cost of providing hospital care, CHA urges CMS to implement the changes below.

### **Payment Update**

For FY 2023, CMS proposes a market basket update of 3.1 percent, less a productivity adjustment of 0.4 percentage points, plus a documentation and coding adjustment of 0.5 percentage points, resulting in an update of 3.2 percent. This update, as well as the FY 2022 payment update of 2.7 percent, are woefully inadequate and do not capture the unprecedented inflationary environment. This is because the market basket is a time-lagged estimate that uses historical data to forecast into the future. **When historical data is no longer a good predictor of future changes, the market basket becomes inadequate. Yet, this is essentially what has been done when forecasting the FY 2022 and 2023 market basket and productivity adjustments.** Indeed, with more recent data<sup>1</sup>, the market basket for FY 2022 is trending toward 4.0 percent, well above the 2.7 percent CMS actually implemented last year.

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<sup>1</sup> IHS Global, Inc.'s (IGI's) forecast of the IPPS market basket increase, which uses historical data through third quarter 2021 and fourth quarter 2021 forecast.

Additionally, the latest data also indicate *decreases* in productivity, not gains.<sup>2</sup> CHA urges CMS to consider the changing health care system dynamics and their effects on hospitals.

**Specifically, CHA urges CMS to 1) implement a retrospective adjustment for FY 2023 to account for the difference between the market basket update that was implemented for FY 2022 and what the market basket is currently projected to be for FY 2022; and 2) eliminate the productivity cut for FY 2023.**

The current inflationary economy combined with the COVID-19 crisis has put unprecedented pressure on Colorado hospitals. Hospitals remain on the front lines fighting this powerful virus—doctors and nurses continue to care for COVID-19 patients even if other industries have moved on from the pandemic. At the same time, hospitals continue to struggle with persistently higher costs and additional downstream challenges that have emerged as a result of the lasting and durable impacts of high inflation and the pandemic.

Specifically, historic inflation has continued and heightened the severe economic instability that the pandemic has wrought on Colorado hospitals. Indeed, the financial pressures being experienced are massive. Colorado hospitals are facing higher prices across the board for medical supplies, labor, and pharmaceutical drugs. Because this high rate of inflation is not projected to abate in the near term, and inflationary pressures are also likely to continue to work their way into wage expectations, it is critical to account for these challenges when considering hospital and health system financial stability in FY 2023 and beyond. **As such, the market basket updates for FY 2022 and FY 2023 are resulting in woefully inadequate reimbursements for hospitals. CHA asks CMS to implement, for FY 2023, a retrospective adjustment to account for the difference between the market basket adjustment that was implemented for FY 2022 and what the market basket is currently projected to be for FY 2022.**

**Additionally, CHA asks that CMS eliminate the productivity cut for FY 2023.** The measure of productivity used by CMS is intended to ensure payments more accurately reflect the true cost of providing patient care and effectively assumes the hospital field can mirror productivity gains across the private nonfarm business sector. This has not been Colorado hospitals' experience, particularly during the pandemic. The COVID-19 pandemic has exasperated existing workforce challenges, making it difficult to fill vacancies at hospitals across Colorado. This issue will only get worse as an analysis by Emsi found that Colorado will be facing a shortage of 54k "lower wage" health care workers and more than 10k registered nurses by 2026.<sup>3</sup> **Therefore, CHA has strong concerns about the proposed productivity cut given the extreme and uncertain circumstances in which hospitals are currently operating. CHA urges CMS to eliminate the cut for FY 2023.**

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<sup>2</sup> U.S. Bureau of Labor Statistics. (May 5, 2022). Productivity and Costs, First Quarter 2022, Preliminary - 2022 Q01 Results. <https://www.bls.gov/news.release/pdf/prod2.pdf>.

<sup>3</sup> Emsi. (2021). U.S. Healthcare Labor Market. <https://www.mercer.us/content/dam/mercer/assets/content-images/north-america/united-states/us-healthcare-news/us-2021-healthcare-labor-market-whitepaper.pdf>

## **Disproportionate Share Hospital (DSH) Payments**

CHA is concerned with CMS' proposal to decrease DSH payments—by approximately \$800 million—to hospitals for FY 2023. These payments are extremely important to Colorado hospitals since many of them serve as safety net providers and experience high levels of uncompensated care. CHA asks for more clarity on the agency's calculations for DSH payments. Specifically, CHA asks CMS to provide more details on the agency's assumption of small increases in discharge volume for FY 2022 and FY 2023. Although it appears likely that volumes will remain lower than historic, pre-pandemic levels, the trends being seen now indicate that FY 2022 and 2023 volumes will continue to increase substantially.

Additionally, CHA questions the agency's estimate that the uninsured rate will decrease from 9.6 percent to 9.2 percent from FY 2022 to FY 2023 when determining DSH payments. In Colorado communities, it is clear that a large *increase* in the number of the uninsured, not a decrease, will occur as the public health emergency coverage provisions begin to unwind. **CHA asks that CMS use more recent data and update its estimates of the Medicare DSH amount to more accurately reflect both discharge volume and the uninsured rate. This would yield figures that more accurately reflect changes in discharge volume and health insurance coverage and losses.**

## **High-Cost Outlier Threshold**

In addition, CHA is concerned about the dramatic scale of the proposed increase in the high-cost outlier threshold—a 39 percent increase from the FY 2022 threshold—that would significantly decrease the number of cases that qualify for an outlier payment. Outlier payments were important to Colorado hospitals during the COVID-19 pandemic when the state saw a greater proportion of higher acuity patients. CHA appreciates that CMS has taken steps to account for some of the pandemic-related factors that may have driven the increase, but which will likely not continue fully in FY 2023. However, CHA urges the agency to explain in more detail the factors driving this significant increase in the IPPS high-cost outlier threshold—the largest by far in the past decade. **Specifically, CHA asks CMS to examine its methodology more closely and consider making additional, temporary changes to help mitigate the substantial increases that are still occurring in the outlier threshold.**

Thank you for your consideration of my comments. Colorado hospitals urge CMS to implement the changes outlined above in the FY 2023 final rule in order to ensure that Medicare payments for acute care services more accurately reflect the cost of providing hospital care.

Sincerely,

*/s/ Megan Axelrod*

Megan Axelrod  
Manager, Regulatory Policy