CHRISTUS Health®

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September 24, 2018

Ms. Seema Verma
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244–1850

Delivered Electronically

Re: Medicare Program: Proposed Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Requests for Information on Promoting Interoperability and Electronic Health Care Information, Price Transparency, and Leveraging Authority for the Competitive Acquisition Program for Part B Drugs and Biologicals for a Potential CMS Innovation Center Model (CMS-1695-P)

Dear Administrator Verma,

CHRISTUS Health (CHRISTUS) appreciates the opportunity to submit the following comments to the Centers for Medicare and Medicaid Services (CMS) in response to the *Medicare Program: Proposed Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Requests for Information on Promoting Interoperability and Electronic Health Care Information, Price Transparency, and Leveraging Authority for the Competitive Acquisition Program for Part B Drugs and Biologicals for a Potential CMS Innovation Center Model* (Proposed Rule). CHRISTUS is an integrated, not-for-profit international health system that includes nearly 350 services and facilities, including more than 50 hospitals in seven U.S. states. We share the Administration's strong commitment to promoting health and wellness solutions that improve the lives of the individuals and communities we serve.

We appreciate the ongoing efforts by CMS to administer and improve the payment system for outpatient services; however, we strongly oppose the Proposed Rule's provisions to expand cuts in reimbursement to off-campus provider-based departments and to further extend payment cuts to participating hospitals under the 340B Drug Pricing Program (340B Program). CHRISTUS is a leading provider of uncompensated care among not-for-profit health care systems and operates in states with some of the highest rates of uninsured, including Texas, Louisiana, and New Mexico. These proposed policies will have a significant impact on whether CHRISTUS will be able to provide the same level of charity care to our indigent patients and surrounding communities going forward.

I. Expansion of Services at Off-Campus Provider-Based Departments (PBDs) Paid under the OPPS

The Proposed Rule proposes to cut payment for evaluation and management (E/M) services in grandfathered provider-based departments (PBDs) to 40 percent of the OPPS payment amount, essentially an expansion of site-neutral policies mandated by Section 603 of the Bipartisan Budget Act (BBA) of 2015. Section 603 requires that, with the exception of dedicated emergency department (ED) services, services furnished in off-campus PBDs that began billing under the OPPS on or after November 2, 2015, or that cannot meet the 21st Century Cures Act "mid-build" exception, no longer be paid under the OPPS but under the Physician Fee Schedule (PFS). In the CY 2019 PFS Proposed Rule, CMS continues to identify the PFS as the applicable payment system for most of these non-excepted services and proposes to set payment for most non-grandfathered services at 40 percent of the OPPS rate, citing "unnecessary" increases in the volume of E/M visits in hospital PBDs.

CMS would implement this proposal in a non-budget neutral manner, estimating a cut to hospital payments of $760 million in CY 2019. The American Hospital Association calculates the proposal would cut payments by $11.2 billion over ten years. Specific to CHRISTUS, our system expects that the proposed policy will reduce payments to off-campus PDBs by over $8 million in CY 2019 (a 60-percent decrease) and by $118 million over the next ten years. CHRISTUS is particularly concerned about how these cuts will impact teaching hospitals' ability to continue serving a medically complex and vulnerable patient population, and how additional cuts to reimbursement levels will impact safety-net hospital systems like CHRISTUS, which is struggling to meet the needs of the low-income communities it serves.

CHRISTUS urges CMS not to move forward with this proposal, because it is clear that Congress did not want grandfathered facilities to have their payments reduced, as this policy extends site neutrality beyond what was required by the 2015 BBA. The cuts to grandfathered PBDs in the Proposed Rule go too far, and CMS must ensure that these facilities are treated as Congress intended and are protected from site-neutral cuts.

II. Expansion of 340B Drug Reimbursement Reduction to Non-excepted Provider-based Departments for 340B Hospitals Designated as Disproportionate Share Hospitals (DSHs), Rural Referral Centers (RRCs), and Urban Sole Community Hospitals (SCHs)

The CY 2018 Final Rule implemented a reimbursement reduction for most 340B drugs (from ASP +6 percent to ASP -22.5 percent), but did not apply the reduction to non-excepted, off-campus provider-based locations. The Proposed Rule, however, would expand those cuts to 340B drugs at non-excepted, off-campus provider-based departments. Effectively, all Child Sites enrolled in the 340B program with a DSH, RRC, or urban SCH designation would be subject to the ASP -22.5 percent reimbursement reduction beginning in January 2019. The combined impact of the CY 2018 Final Rule and the Proposed Rule on the CHRISTUS Health ministry would be approximately $9 million annually. This proposal should be withdrawn for the following reasons.

Similar to the reimbursement reduction finalized in the CY 2018 rule, the Proposed Rule further inhibits the Congressional purpose of the 340B Program and puts CHRISTUS Health safety-net hospitals at significant financial risk. Further expansion of the 340B reimbursement reduction to non-excepted provider-based departments should be withdrawn, because it directly contradicts the primary purpose and function of the 340B Program, putting crucial safety-net hospitals and the health care services they provide to indigent patients in jeopardy.

The ultimate purpose of the drug purchasing discounts received by 340B entities (as opposed to non-340B entities) is to offset the financial strain of large volumes of uncompensated care rendered by these 340B-eligible providers and to stretch federal resources as far as possible. The Health Resources and Services Administration (HRSA) ensures the fulfillment of this purpose by enforcing strict eligibility standards for the types of hospitals permitted to participate in the 340B Program. Only those not-for-profit providers serving underserved communities or disproportionately high percentages of the indigent population are eligible to receive 340B discounts.

Without these discounts, many hospitals would not otherwise be able to reach as many vulnerable patients and, in many cases, would not have the financial capability to remain in business at all. Applying these reimbursement cuts to non-excepted departments will only further threaten the financial capability of these safety-net providers and will likely lead to a negative impact on patient care. These reimbursement reductions thus would close off financial lifelines for numerous 340B providers, in turn preventing these entities from offsetting uncompensated costs and reducing the reach of services to indigent patients.

Moreover, based on the fact that CMS has signaled that it will (1) not only keep the current 340B reimbursement reductions in place, but (2) may also expand the reimbursement cuts to non-excepted departments, commercial payers are now more likely to mirror Medicare reimbursement policies. Many hospital systems, including CHRISTUS, have already been approached by some payers that will make such 340B reimbursement cuts a precondition to the next contract. These additional cuts in commercial reimbursement will further decrease overall 340B savings and directly threaten charity and uncompensated care.

For example, in fiscal year 2018, CHRISTUS Health provided roughly $319 million in charity care, which includes programs and services for individuals and families who have inadequate resources, are uninsured or underinsured. Proposed combined cuts by Medicare and commercial payers following suit will proportionately impact CHRISTUS Health's extensive charity care program.

In conclusion, the Proposed Rule further discourages hospitals from establishing new, non-excepted off-campus provider-based departments in areas of need and would further harm patient care in these at-risk areas. Based on the reduced payment rates for non-excepted provider-based departments, as discussed above, many hospital systems, including CHRISTUS, are hesitant to establish new hospital department locations.

The fact that CMS still reimburses drugs administered at these non-excepted locations at ASP +6 percent makes establishing these non-excepted locations financially viable in some cases. However, the Proposed Rule would eliminate a significant portion of these potential drug savings and make establishing non-excepted locations much less financially viable. Without these additional 340B drug savings to counteract the lower overall reimbursement rate, hospitals would have a more limited ability to establish new service lines and locations in areas of need, leading to a negative impact on hospitals' most vulnerable patient populations.

On behalf of CHRISTUS Health, thank you again for the opportunity to provide feedback on this Proposed Rule. We are hopeful that our comments are helpful, and we welcome any questions you may have.

Sincerely,

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