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Association of
American Medical Colleges
655 K Street, N.W., Suite 100, Washington, D.C. 20001-2399
T 202 828 0400
www.aamc.org

April 11, 2023

Ms. Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
ATTN: CMS-2445-P
7500 Security Blvd
Baltimore, MD 21244-1850

Re: Medicaid Program; Disproportionate Share Hospital Third-Party Payer Rule (CMS-2445-P)

Dear Administrator Brooks-LaSure:

The Association of American Medical Colleges (AAMC or the Association) welcomes this opportunity to comment on the proposed rule entitled, "Medicaid Program; Disproportionate Share Hospital Third-Party Payer Rule," 88 *Fed. Reg*. 11865 (February 24, 2023), issued by the Centers for Medicare & Medicaid Services (CMS or the Agency).

The AAMC is a nonprofit association dedicated to improving the health of people everywhere through medical education, health care, medical research, and community collaborations. Its members are all 157 U.S. medical schools accredited by the Liaison Committee on Medical Education; 13 accredited Canadian medical schools; approximately 400 teaching hospitals and health systems, including Department of Veterans Affairs medical centers; and more than 70 academic societies. Through these institutions and organizations, the AAMC leads and serves America's medical schools and teaching hospitals and the millions of individuals across academic medicine, including more than 193,000 full-time faculty members, 96,000 medical students, 153,000 resident physicians, and 60,000 graduate students and postdoctoral researchers in the biomedical sciences. Following a 2022 merger, the Alliance of Academic Health Centers and the Alliance of Academic Health Centers International broadened the AAMC's U.S. membership and expanded its reach to international academic health centers.

The proposed rule outlines the implementation of Section 203 of the Consolidated Appropriations Act, 2021[1] (CAA, 2021) related to the treatment of third-party payments in the calculation of the hospital-specific disproportionate share hospital (DSH) limits. Beginning October 1, 2021, the calculation of the Medicaid portion of the hospital-specific DSH limit can only include costs and payments for services furnished to beneficiaries for whom Medicaid is the primary payer, except for hospitals in the 97th percentile of all hospitals with respect to inpatient days made up of patients who, for such days, were entitled to Medicare Part A benefits and to supplemental security income (SSI) benefits. (pp. 11866-11867). As a result, cost and payments for services provided to Medicaid beneficiaries with other sources of coverage are excluded. (p. 11866). The AAMC appreciates that the Section 203 legislation is detailed, affording CMS little flexibility when implementing. However, our members report that the impact of the changes will dramatically reduce their Medicaid DSH reimbursements, impacting their ability to furnish services to all patients.

[1] Pub. L. 116-260

AAMC members assert that changes associated with Section 203 could cut tens of millions of dollars from Medicaid DSH reimbursement to hospitals. Losses in revenue of this magnitude would go beyond suspending certain outreach activities; hospitals would be compelled to make tough decisions about fundamental operations including shutting down whole hospital units or ceasing to provide an entire specialty or ancillary service lines. Hospitals would be forced to curtail or eliminate services, such as behavioral health and burn units, that could no longer be sustained. Drastic actions like these would disproportionately impact the most vulnerable in our communities who rely on teaching hospitals for their care. We urge the Agency to monitor the impact of these cuts on hospitals and, if necessary, to work with Congress to mitigate the negative impacts of this legislation on hospitals that serve a high volume of low-income patients.

Disproportionate share hospital payments compensate hospitals that serve a disproportionate share of low-income patients. In 2021, AAMC-member teaching hospitals accounted for 28 percent of all Medicaid inpatient days.[2] Cutting DSH payments to hospitals will further exacerbate hospitals' financial struggles and their ability to care for all patients. Medicaid reimbursement rates to hospitals are extremely low. According to the Medicaid and CHIP Payment and Access Commission (MACPAC), Medicaid fee-for-service (FFS) base payments are significantly below hospitals' costs of providing services to Medicaid enrollees. In March 2023, MACPAC published an analysis showing that Medicaid FFS base payment rates to hospitals were 78 percent of Medicare rates for the 18 Medicare-severity, diagnostic-related groups the commission reviewed.[3] Although states can supplement these low payments with disproportionate share hospital payments, this policy constrains states' flexibility and will result in harmful cuts in the amounts certain hospitals can receive.

Section 203 provides for an exception to the hospital-specific DSH limit for hospitals in the 97th percentile of all hospitals with respect to inpatient days made up of patients, who for such days, were entitled to Medicare Part A benefits and to SSI benefits. (p. 11867). CMS is proposing to define a "97th percentile hospital" to mean a hospital that is in "at least the 97th percentile of all hospitals nationwide with respect to the hospital's number of Medicare SSI days or percentage of inpatient days that are Medicare SSI days for the hospital's most recent cost reporting data." (p. 11870). Hospitals that qualify for the exception would have their hospital-specific DSH limit set at the higher of the amount calculated under the methodology in existence before January 1, 2020, or the methodology established by the CAA, 2021. (p. 11871).

CMS is proposing to determine a hospital's qualification for the 97th percentile exception on a prospective basis and will release the rankings before October 1 each year. (p. 11870). We support prospectively informing hospitals whether they are included in the 97th percentile. To allow hospitals the maximum amount of time to prepare for drastic cuts in DSH payments we urge CMS to expeditiously release the rankings and data for hospitals that qualify for the exemption time frame beginning October 1, 2022. Further, we urge CMS to annually release both the data and rankings for all hospitals, not just those that qualify for the exemption in a timely manner.

The consequences of the changes enacted by Section 203 will be significant and cannot be overstated. The Agency must monitor the impact on hospitals and, if necessary, work with Congress and stakeholders

[2] Source: AAMC analysis of AHA Annual Survey Database FY2021 and NIH Extramural Research Award data. Note: Data reflect all short-term, general, nonfederal hospitals.
[3] https://www.macpac.gov/wp-content/uploads/2023/03/Medicaid-Base-and-Supplemental-Payments-to-Hospitals-Issue-Brief.pdf

to ensure these cuts will not force hospitals to cut back on vital services they provide to their communities.

CONCLUSION

Thank you for the opportunity to comment on this proposed rule. We would be happy to work with CMS on this issue or other topics that involve the academic community. If you have questions regarding our comments, please feel free to contact Mary Mullaney at mmullaney@aamc.org.

Sincerely,

Jonathan Jaffery, M.D., M.S., M.M.M., F.A.C.P.
Chief, Health Care Affairs

cc: David Skorton, M.D., AAMC President and Chief Executive Officer
Ivy Baer, JD, MPH, Senior Director and Regulatory Counsel