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**Association of  
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April 11, 2023

Ms. Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-1772-P  
Mailstop C-4-26-05  
7500 Security Boulevard  
Baltimore, MD 21244-1850

***Re: Medicare Disproportionate Share Hospital (DSH) Payments: Counting Certain Days Associated with Section 1115 Demonstrations in the Medicaid Fraction [CMS-1788-P]***

Dear Administrator Brooks-LaSure:

The Association of American Medical Colleges (AAMC or the Association) welcomes the opportunity to submit comments on the proposed rule entitled “Medicare Disproportionate Share Hospital (DSH) Payments: Counting Certain Days Associated with Section 1115 Demonstrations in the Medicaid Fraction” 88 *Fed. Reg.* 12623 (February 28, 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.

CMS is proposing to modify the definition of “‘regard as’ eligible for medical assistance under a state plan approved” for the purpose of Medicare DSH calculations with the result that many hospitals will see a decrease in their DSH payments. Under the proposal, only patients who receive health insurance or buy health insurance with premium assistance provided to them under a Section 1115 demonstration, where states receive matching funds would be included in the Medicaid fraction of the DSH calculation (p.12628). Specifically, the Medicaid fraction numerator would only include the days of patients who are covered under a Section 1115 demonstration that provides health insurance that covers inpatient hospital services or receive premium assistance that covers 100% of the patient’s premium cost for insurance that includes coverage for inpatient services — provided in either case that the patient is not also entitled to Medicare Part A (p.12628). Previously, CMS had proposed, but did not finalize, policies to count the days of patients who receive premium assistance at 90% of the patient’s premium cost and the plan must

include essential health benefits through a Section 1115 demonstration.<sup>1</sup> The AAMC continues to oppose this proposal, consistent with comments we submitted in response to proposals in previous years' Inpatient Prospective Payment System (IPPS) proposed rules.<sup>2</sup>

In 2021, AAMC member teaching hospitals accounted for 28% of all Medicaid inpatient days.<sup>3</sup> Without being able to include all of these patients in the Medicaid fraction numerator, hospitals will see a decrease in their DSH adjustment percentage. Removing the ability of hospitals to include certain individuals covered under an 1115 waiver in the Medicaid fraction will financially disadvantage hospitals that serve a high volume of low-income individuals at a time when many hospitals continue to face financial challenges exacerbated by the COVID-19 public health emergency. For many AAMC members the impact of this change could be dramatic and may have a negative effect on the services they are able to provide. For example, this proposal could reduce the number of hospitals that are eligible for the 340B Drug Pricing Program which provides essential support to hospitals and other covered entities and allows them to provide more services to the communities and patients they serve.

The Association continues to believe that the proposal does not accurately capture the Medicaid eligible patient population. Even though some individuals who qualify under an 1115 waiver may receive a limited set of benefits, they are still considered Medicaid beneficiaries and should be counted in the numerator of the Medicaid fraction. Additionally, these individuals' inpatient hospital days must continue to be counted in the Medicaid fraction. Further, as noted in the proposed rule, many court cases have supported the interpretation that these individuals be included in the Medicaid DSH calculation (p.12625-12626).

CMS has also proposed to exclude from the Medicaid fraction numerator patients whose inpatient hospital costs are paid for with funds from an uncompensated or undercompensated care pool authorized by a Section 1115 demonstration (p.12629). The AAMC does not support this proposal. Excluding these patients from the numerator does not accurately capture the population of Medicaid eligible individuals who receive inpatient care. Individuals counted in uncompensated or undercompensated care pools are still receiving medical assistance under an 1115 waiver and therefore are Medicaid beneficiaries. Again, as noted in the proposed rule, the courts have also supported the interpretation that these individuals be included in the Medicaid DSH calculation (p.12627).

## CONCLUSION

Thank you for the opportunity to comment on this proposed rule. We would be happy to work with CMS on any of the comments discussed in this letter or other topics that involve the academic medicine community. If you have questions regarding our comments, please feel free to contact Katie Gaynor at [kgaynor@aamc.org](mailto:kgaynor@aamc.org).

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<sup>1</sup> 87 FR 28398

<sup>2</sup> <https://www.aamc.org/media/61361/download?attachment>

<sup>3</sup> Source: AAMC analysis of AHA Annual Survey Database FY2021 and NIH Extramural Research Award data. Note: Data reflect all short-term, general, nonfederal hospitals.

Administrator Brooks-LaSure

April 11, 2023

Page 3

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Jaffery', with a stylized flourish at the end.

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