

Aug. 16, 2022

Ms. Chiquita Brooks-LaSure  
Administrator  
Submitted electronically: <http://www.regulations.gov>.  
File Code: CMS-1772-P

***RE: CMS-1772-P, Medicare Program; Proposed Changes to the Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems 2023 Proposed Rule***

Dear Administrator Brooks-LaSure:

The MHA appreciates the opportunity to provide comment to the Centers for Medicare & Medicaid Services (CMS) regarding the proposed rule to update the Medicare fee-for-service (FFS) hospital Outpatient Prospective Payment System (OPPS) for 2023. Our comments focus specifically on the remedy following the recent United States Supreme Court (SC) decision in *American Hospital Association v. Becerra* regarding the unlawful cuts to hospitals for 340B drugs implemented in 2018.

The MHA has significant concerns regarding the proposed rule, which formally proposes to continue paying 340B hospitals at average sales price (ASP) minus 22.5% rather than restoring payments to ASP plus 6% based on the recent SC decision. The CMS noted in the proposed rule that the agency anticipates restoring payments to ASP plus 6% in the OPPS final rule. This increase to 340B payment rates, estimated at \$1.96 billion nationally, would be funded by a reduction in the outpatient conversion factor from the proposed \$86.79 to \$83.86, which is roughly 0.4% lower than the current factor. Hospitals cannot sustain a payment cut, especially at this time, as they continue to face extraordinary inflationary cost increases.

The MHA urges the CMS to:

- 1. Revert to the prior policy of paying ASP plus 6% for drugs acquired through the 340B program;**
- 2. Promptly repay all hospitals the difference between ASP plus 6% and the amount they were actually paid for 340B drug claims for 2018-2022 due to the unlawful policy;**
- 3. Hold all hospitals harmless for 2018-2022 claims, which means no recoupment of funds for claims paid during these years; and**
- 4. Find new funds to restore 340B payments to ASP plus 6% in 2023 with no reduction to the outpatient conversion factor. It is vital that the CMS provide an adequate update.**

The MHA appreciates this opportunity to provide comments to the CMS regarding the proposed outpatient rule and are confident that our proposed changes will have a positive impact on hospitals and all patients they serve. If you have questions regarding this comment letter, please contact me at (517) 703-8601 or via email at [lappel@mha.org](mailto:lappel@mha.org).

Sincerely,

**Brian Peters**, Chief Executive Officer

A handwritten signature in black ink, appearing to read 'Laura Appel', is positioned above the typed name and title.

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