February 16, 2016

The Honorable Fred Upton
Chairman,
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Joseph Pitts
Chairman, Subcommittee on Health
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton and Subcommittee Chairman Pitts:

On behalf of our more than 200 member hospitals and health systems, the Florida Hospital Association (FHA) appreciates the opportunity to provide feedback to the Energy and Commerce Committee regarding the enactment of Section 603 of the Bipartisan Budget Act (BBA) of 2015, as well as other site neutral payment proposals that were raised in the Committee's February 5 letter to the health care community.

In general, our members are extremely concerned about site neutral payment policy that would reimburse hospitals at the payment rates of facilities with lesser clinical capabilities. While the reimbursement paid to a hospital outpatient department (HOPD) has historically exceeded the reimbursement provided to physician offices and ambulatory surgical centers (ASCs), the Centers for Medicare & Medicaid Services (CMS) provided rationale for the difference in the 2014 final rule for the physician fee schedule, stating:

> We believe that this payment difference generally reflects the greater costs that facilities incur than those incurred by practitioners furnishing services in offices and other non-facility settings. For example, hospitals incur higher overhead costs because they maintain the capability to furnish services 24 hours a day and 7 days a week, furnish services to higher acuity patients than those who receive services in physician offices, and have additional legal obligations such as complying with the Emergency Medical Treatment and Active Labor Act (EMTALA). Additionally, hospitals and ASCs must meet Medicare conditions of participation and conditions for coverage, respectively.

Further, hospitals care for all patients who seek emergency care, regardless of their insurance status or ability to pay; maintain standby disaster readiness capacity in the event of a catastrophic occurrence; and care for patients who require more complex services than those treated by private practice clinics.

Section 603 of the BBA of 2015 provides that, starting January 1, 2017, off-campus HOPDs that are considered provider-based and established on or after November 2, 2015, will no longer be eligible for payment for non-emergency services under the outpatient prospective payment system (OPPS). Instead, non-emergency services provided at these facilities will be paid under

the ASC payment system or the physician fee schedule. Under the law, while HOPDs that currently bill under the OPPS are "grandfathered" for purposes of these provisions, HOPDs that are currently under development, but not yet billing under the OPPS, will not be protected from the change in reimbursement.

Many questions arise from the new law that we ask Congress and/or CMS to address as soon as possible. It is vital that there be flexibility afforded to providers as the implementing regulations are established. These questions include –

- Dedicated Emergency Departments (DEDs). The law excludes from the site neutral payment reductions those items and services that are furnished by a DED. Clarification is needed as to whether these excluded items and services are only those provided to a patient presenting with a perceived emergency condition or if care provided in a non-emergent/urgent basis, but within the space of the DED, is also considered excluded. As an example, DEDs offer ancillary services such as radiology, laboratory testing, medication management, and other diagnostic services. Not all patients receiving these services present with an emergency condition, but rather present requesting a prescription refill, blood pressure check or treatment for a minor illness or injury. *The FHA believes that all items and services provided in the same facility as the DED should be considered as part of the DED and that none of the items and services furnished in the same facility as the DED should be subject to site neutral payment reductions.*

- Relocation and Rebuilding. The law does not address relocation and rebuilding of existing grandfathered HOPDs. *The FHA believes that cases of relocation or rebuilding should not trigger site neutral payment reductions. To do so would essentially freeze hospital outpatient services in their existing locations, with no ability to respond to environmental, financial, or population pressures without facing reductions in reimbursement.*

- Change of Ownership. Following a change of ownership, the HOPD continues to provide services at the same address but with a new provider number. *The FHA believes that a change of ownership should not negate the grandfathered status of an existing provider. The site neutral payment provisions should not apply to services that are furnished in a newly acquired off-campus HOPD that has historically billed Medicare under the OPPS prior to being acquired by another hospital or health system.*

- Under Development. Those providers who were contemplating – or who had commenced but not completed – off-campus HOPDs are severely damaged by the new law. In Florida, we have numerous facilities that have expended significant financial resources on developing off-campus HOPDs – some scheduled to open within weeks of the cut off for grandfathered status. *The FHA supports allowing off-campus HOPDs already under development when the BBA of 2015 was signed into law to qualify as grandfathered facilities. The FHA asks that Congress revisit the definition for grandfathered in the law and protect organizations that have already invested significant resources to develop new facilities from site neutral payment reductions. We believe that a legislative fix for facilities under development is time-critical as providers need to move quickly to address the financial consequences of the loss of provider-based status and payment under the OPPS.*

In addition to the provisions of the BBA of 2015, the Committee has requested comments on proposals from MedPAC regarding site neutral payments. MedPAC has called for the following –

- HOPD/Physician payment equalization for evaluation and management services;
- HOPD/Physician payment equalization for 66 targeted services; and
- HOPD/ASC payment equalization for 12 targeted services.

MedPAC has also discussed reducing payment for oncology services furnished in HOPDs while simultaneously increasing payment for oncology services furnished in physician offices. In evaluating the impact of these proposals, Medicare reimbursements to Florida hospitals would decrease by $1.45 billion over 10 years.

While the differences in payment rates for similar services across ambulatory settings are largely artifacts of the very different and complex methodologies that Congress enacted and that CMS implemented under the OPPS and the physician payment system, OPPS payments are generally based directly on hospital data – both audited cost reports and claims data. The physician fee schedule is based on voluntary responses from physician survey data. To artificially adopt one payment methodology over the other – when not based on audited data – would undermine the basis of the Medicare payment system.

In summary, by cutting payment to new facilities beyond the main campus of a hospital, this policy will force migration of outpatient services to those campuses over time. This is directly counter to modern clinical care where it has been repeatedly proven that patients are more likely to receive needed care closer to where they reside. Couple this with the clinical movement of services out of the inpatient setting into the outpatient setting, and the problem is multiplied. FHA urges amending Section 603 to provide clarity with regard to the questions identified above and to establish reasonable exceptions, particularly with regard to facilities that were under development at the time of enactment.

Thank you in advance for your consideration of these issues. If you have any questions, please contact me at (850) 222-9800.

Sincerely,

Bruce Rueben
President