July 10, 2013

Marilyn Tavenner, Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201

RE: CMS 2367-P Medicaid; State Disproportionate Share Hospital Allotment Reductions; Proposed Rule (Vol. 78, No. 94, May 15, 2013)

Dear Ms. Tavenner:

The Florida Hospital Association (FHA), on behalf of its more than 200 hospitals and health system members, appreciates the opportunity to respond to the Centers for Medicare & Medicaid Services' (CMS) proposed rule implementing the *Patient Protection and Affordable Care Act* (PPACA) aggregate reductions to state Medicaid Disproportionate Share Hospital (DSH) allotments.

As background, PPACA mandated changes to both the Medicare and Medicaid DSH programs beginning in fiscal year (FY) 2014. The DSH program provides supplemental payments to hospitals that serve a disproportionate number of low-income patients, including Medicaid beneficiaries, low-income Medicare beneficiaries, the uninsured, and the underinsured. DSH payments are essential for safety-net hospitals serving vulnerable Floridians.

The FHA supports and endorses the principles developed by the American Hospital Association Board of Trustees and used these principles as a guide in responding to the proposed rule. The five AHA Medicaid DSH implementation principles state –

- Medicaid DSH payments should continue because the need for such assistance remains as hospitals are called upon to provide unreimbursed care for those individuals without health insurance coverage or other means to pay for their care.
- The definition of uninsured should be based on the best available and most recent national data survey sources and could include an algorithm that combines the data from several surveys. The definition of uninsured should capture all populations regardless of citizenship status. The definition should be reviewed periodically to make certain it reflects changes in insurance levels.
- State governments should retain maximum flexibility in the design of their Medicaid DSH program, including how those funds should be targeted, as long as DSH funds are spent on patient care services.
- State governments should have the maximum flexibility in determining how to raise their state share of Medicaid DSH funds.
- The PPACA Medicaid DSH funding reductions should be restored if the promised health care coverage improvements are not realized.

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Both on a numerical and percentage basis, Florida ranks third among states with uninsured individuals. Florida has 3.7 million uninsured residents – the third highest state in the nation with uninsured residents, surpassed only by California and Texas. On a percentage basis, 21.3 percent of Floridians are uninsured – equal to New York and surpassed only by Texas. Florida is not statutorily deemed a "low-DSH" state. FHA would characterize Florida as a "low-ratio" state because its DSH allocation on a per uninsured basis is among the lowest in the nation at less than $55.00 per uninsured individual.

FHA's specific comments follow below:

- FHA believes that CMS should place greater emphasis in its DSH health reform methodology (DHRM) on the percentage of uninsured in a state. For states like Florida with very high percentages of uninsured, DSH payments are particularly important to ensuring the ability of hospitals to serve patients regardless of their ability to pay. Given Florida's very low DSH allocation cap (which was statutorily set 20 years ago) relative to its very high uninsured population, any cut to Florida's already low DSH allocation will be felt most acutely by Florida's DSH hospitals.

- FHA believes that the two-year time frame for the application of the proposed DSH allotment reduction methodology is a responsible approach. It would allow CMS, states, and stakeholders more time to fully assess CMS's approach and allow more time to explore opportunities for health care coverage expansion. Applying the DHRM to only the first two years of the scheduled PPACA DSH reductions enables CMS to assess the status of Medicaid expansion and revisit the hospital DSH targeting policies in the future.

- CMS proposes to use data sources for the DHRM that are transparent and readily available to CMS, the states and the public. CMS proposes to use data from the Census Bureau's American Community Survey (ACS), existing DSH allotments, CMS Form-64 Medicaid Budget and Expenditures System data and the Medicaid DHS audit reports. The FHA supports CMS's use of the ACS as a better data source for measuring the rate of uninsurance because it surveys the entire population, has the largest sample size, uses multiple methods to reach respondents, and has the highest response rate. We are concerned, however, that the ACS may undercount undocumented individuals who are uninsured. Hospitals serve every individual who comes through their doors seeking health care services, without regard to insurance or citizenship status. We believe any DSH methodology should reflect this reality and that CMS should work with the Census Bureau and others to develop a methodology that accounts for the entire uninsured population regardless of citizenship status.

- CMS notes that the proposed two-year reduction methodology would allow for further data refinement and methodology improvements before PPACA's larger DSH allotment reductions are slated to begin. In addition, CMS plans to issue future rulemaking to implement the PPACA DSH reductions in FY2016 and beyond. The FHA recommends that CMS engage the provider community in future changes to the DHRM prior to formal rulemaking. This should include discussion with providers regarding how to improve the S-10 worksheet to the Medicare cost report and how the data from the S-10 could eventually be used for future rulemaking. CMS should also be as transparent as possible on the issues regarding data refinement and methodology improvements.

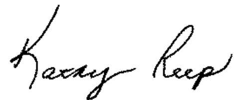
- CMS should issue guidance clarifying the timing and process through which the agency plans to implement the allotment reduction amounts determined using the DSH health reform methodology and should delay any Medicaid DSH recoupments until after January 2014. The proposed rule is silent on the manner and mechanism through which CMS will implement the allotment reduction amounts for each state. States and hospitals need to be able to plan accordingly so that they can operate with reduced funding levels with minimum disruption to patient care. We urge CMS to clarify, as soon as possible, the timing and process of how the agency plans to implement the reduction amounts.

While FHA supports PPACA's goal of expanding coverage and aligning payment incentives to improve patient care, we remain extremely concerned about implementation of the Medicaid DSH cuts as currently constructed in the law. FHA applauds the President for proposing a one-year delay of the Medicaid DSH cuts. Congress included these reductions in PPACA, in part, because it expected mandatory coverage expansion through the Medicaid program and the Health Exchanges to reduce the amount of uncompensated care hospitals would have to provide, and theoretically reduce the need for DSH payments. However, rather than tying the level of Medicaid DSH reductions to the actual need for DSH payments, Congress listed each year's reduction amount in the law, creating a fixed reduction instead of one that adapts to need. Even if every state expanded its Medicaid program, there would still be 23 million uninsured Americans, including substantial numbers of uninsured Floridians.

Since the U.S. Supreme Court's 2012 decision rendering the PPACA Medicaid expansion provision optional, a considerable number of states with a large number of uninsured residents have indicated they will not expand their Medicaid program. Regardless of the accuracy of Congress' original assumptions behind the level of DSH cuts, after the Court's decision, the level of cuts no longer reflects the continued need for DSH payments. While we understand that the global amount of cuts per fiscal year is statutorily determined unless changed by the Congress, we did want to share our overriding concerns about the impact that they would have on states like Florida with very low DSH allotments and very high levels of uninsured.

The FHA appreciates the opportunity to provide these comments for consideration in finalizing the Medicaid DSH rule. If there are any questions, please do not hesitate to contact me at kathyr@fha.org.

Sincerely,



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