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Via Overnight Delivery (Federal Express Confirmation # 8759 2081 2745)

July 10, 2013

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–2367–P
Mail Stop C4–26–05
7500 Security Boulevard
Baltimore, MD 21244–1850

Re: CMS–2367–P; Proposed Rule Regarding Medicaid Disproportionate Share Hospital Allotment Reductions

Dear Sir or Madam:

We are writing to comment on the proposed rule regarding Medicaid Disproportionate Share Hospital Allotment Reductions, 78 Fed. Reg. 28,551 (May 15, 2013).

Specifically, we disagree with the proposed methodology for calculating Factor 4, the High Level of Uncompensated Care Factor (HUF). For the HUF, CMS has proposed first to determine each disproportionate share hospital's uncompensated care level by dividing its uncompensated care cost by the sum of its total Medicaid cost and its total uninsured cost. 78 Fed. Reg. at 28,557. Under the proposal, these data elements would come from the most recently submitted and accepted DSH audit template. *Id*.

The proposed formula for Factor 4 does not properly reflect whether a hospital actually has a high level of uncompensated care. Under the proposed formula, a hospital that furnishes a miniscule volume of service to Medicaid and uninsured patients would nevertheless be identified as having a high level of uncompensated care if the hospital receives reimbursement for only a small percentage of the relatively little cost it incurs to furnish that low volume of services to these patients. Indeed, the proposed regulation recognizes this flaw in the methodology and provides an example to illustrate the flaw. *Id*. at 28,558. But the example given does not illustrate all the problems with the methodology. The further example below underscores the need to change the methodology.

Assume that Hospital C is identical to Hospital B in CMS's example except that Hospital C is twice as expensive. As a result, Hospital C's DSH eligible Medicaid and uninsured costs are $4 million (instead of the $2 million for Hospital B). Hospital C's uncompensated costs for the Medicaid and uninsured is thus $3 million (in other words, $1 million of the $4 million in Medicaid and uninsured patient costs are compensated, just as for Hospital B). Hospital C has a higher HUF (.75) simply because of its higher costs.

We agree that using total costs in the denominator would allow a *better* assessment of uncompensated care level that what CMS has proposed. CMS states that, for later years, it wishes to use total costs of the hospital as the denominator in the HUF calculation in place of the Medicaid and uninsured costs. We believe that CMS should do that now using data from the Medicare cost report that is readily available to CMS, in its HCRIS cost report database, rather than waiting to collect that same data again later through the Medicaid program. If the most recent data available from the Medicare cost reports are not from the same time period as the other data being used for the calculation, then a price leveling adjustment could be performed to match the price levels to the same time period.

If you have any questions, please do not hesitate to contact me. (410 531 1969).

Sincerely

Theodore Giovanis