



June 9, 2023

VIA REGULATIONS.GOV FILING

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS 1785-P
P.O. Box 8013
Baltimore, MD 21244-8013

RE: 2024 Medicare Inpatient Prospective Payment System Proposed Rule

The Medicaid and Medicare Advantage Products Association of Puerto Rico (MMAPA) submits the following comments on the Proposed Rule, *Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Proposed Fiscal Year 2024 Rates*, (IPPS Proposed Rule). We wish to thank the Centers for Medicare & Medicaid Services (CMS) for your time and attention to improving the Medicare program for beneficiaries in Puerto Rico.

I. SUMMARY OF COMMENTS

Our comments and recommendations herein are offered for the purpose of maintaining stability in the Puerto Rico health care system. It is important to recognize that Puerto Rico's hospitals are under pressure to retain talented personnel as healthcare professionals have the option to move to the mainland for higher compensations. We describe in detail below the following requests of Medicare Advantage (MA) plans operating in Puerto Rico:

- We thank CMS for proposing to maintain the Low Wage Index Hospital Policy while more data is collected to measure the impact of the program;
- The Low Wage Index Hospital Policy is essential to the sustainability of hospitals in Puerto Rico as well as the ability to deliver quality care to all manner of Medicare beneficiaries in Puerto Rico;
- Ending the Low Wage Index Hospital Policy would drastically reduce both Medicare payments to Puerto Rico hospitals and Medicare benchmarks for Puerto Rico MA plans;
- CMS should consider alternatives to the IHS/Puerto Rico Hospital Supplemental Payment Policy that does not cap payments at 2022 levels;
- The market basket update for Puerto Rico hospitals should be updated to account for inflationary effects on the costs of equipment and supplies in hospitals.

II. CONTINUATION OF THE LOW WAGE INDEX HOSPITAL POLICY (SECTION III.G.4)

Beginning in FY 2020, CMS increased the wage index for hospitals with a wage index value below the 25th percentile wage index value for a fiscal year by half the difference between the otherwise applicable final wage index value for a year for that hospital and the 25th percentile wage index value for that year across all hospitals (the low wage index hospital policy). CMS stated at the time that this policy would be in effect for **at least** 4 years. In the 2024 Proposed Rule, CMS proposes to continue the low wage index hospital policy in order to collect sufficient data over time to better evaluate the importance and necessity of this policy. CMS notes that it **“may decide to take a different approach in the final rule depending on public comments or court proceedings.”**¹

MMAPA strongly endorses the continuation of the Low Wage Index Hospital Policy and we applaud CMS for proposing this responsible step. We believe that more time to collect data will help CMS and all policy makers better articulate how this policy is a more than appropriate measure to address deficiencies in wage index policy that lead to inequitable outcomes for Medicare beneficiaries. We outline below considerations in favor of the continuation and suggestions for issues for CMS to measure and analyze over time.

a. *The Rationales for Implementing the Low Wage Index Hospital Policy Remain*

i. External Sources Confirm “Downward Spiral” Effect of Low Wages

In proposing the policy, CMS acknowledged that the underlying wage index system has increased the gap between the wage indexes of the high and low wage States to a much larger degree than what the wage index was initially designed to address, the difference in labor markets across the country for comparable services. CMS was right to refer this “situation as the ‘downward spiral’.”² Multiple external sources confirmed this conclusion.

In several reports to Congress, the Medicare Payment Advisory Commission (MedPAC) documented the wage index’s “problem” of the downward spiral effect. It was articulated as a phenomenon in which hospitals that successfully moderate increases in hourly wages relative to the national average increase will see a decrease in their wage index. “They will then receive lower payments, which may create pressure to exert even tighter control over costs . . . If hospitals succeed at keeping wage increases below the national average again, their wage index could decrease still further.”³ As such, MedPAC recommended Congress implement an entirely new wage index system.

In its report, *Significant Vulnerabilities Exist in the Hospital Wage Index System for Medicare Payments*, the HHS Office of the Inspector General (OIG) noted “continuing and significant vulnerabilities”⁴ and recommended comprehensive reform the hospital wage index system, including the option of a commuting-based wage index. In particular, OIG noted that existing policies under the wage index “create a benefit for a minority of States that is then funded by a majority of States, including

¹ 88 FR 26978 (May 1, 2023).

² See 84 FR 19394 (May 3, 2019).

³ MedPAC, Report to the Congress: Promoting Greater Efficiency in Medicare, pg. 130 (June 2007).

⁴ HHS OIG, Significant Vulnerabilities Exist in the Hospital Wage Index System for Medicare Payments (A-01-17-00500) (Nov. 21, 2008).

States that are overwhelmingly rural in character.”⁵

In April 2012, the Secretary of HHS commissioned the Institute of Medicine (IOM) to evaluate CMS’ implementation of the wage index. In the report, IOM’s Committee on Geographic Adjustment Factors in Medicare Payment proposed a set of recommendations for modifying the hospital wage index in both the method used in its construction and the data used in its calculation. The IOM noted the adverse effects the current wage index has on provider payment accuracy, transparency, timeliness and administrative burden. The IOM called for a model using hourly wage data from the BLS Occupational Employment Survey rather than from hospital cost reports. The IOM also recommended measuring hourly wages using data for all health care workers, rather than only hospital workers, and using a fuller set of occupations incorporated in the hospital wage index occupational mix adjustment.

In light of rising non-labor costs and Medicare reimbursements in Puerto Rico that lag far behind the 50 States and the District of Columbia, hospitals in Puerto Rico have historically had no choice but to keep wages low and watch the most qualified health care professionals move to higher wage areas in the 50 States. As health professionals and physicians are U.S.-educated and bilingual, the States are a natural escape route from such suppressed wages.

ii. Puerto Rico Wage Indexes Have Not Materially Increased Since 2020

CMS stated in the 2020 IPPS Final Rule⁶ and the 2023 Proposed Rule that the intension of the Low Wage Index Hospital Policy has been to “allow employee compensation increases implemented by these hospitals sufficient time to be reflected in the wage index calculation.”⁷ Employee compensation in Puerto Rico hospitals has not increased since 2020, likely due to several factors, including the disruptive economic impacts of the COVID-19 pandemic.⁸ We believe that additional years of data will confirm this for CMS.

CMS should maintain the Low Wage Index Hospital Policy until it can review and confirm that hospital compensation in relevant areas has indeed increased and will be reflected in prospective wage index calculations. Ending the policy before such time undermines the entire purpose of the adjustment.

b. Ending the Low Wage Index Hospital Policy in 2024 Would Have Extreme Adverse Impacts on the Puerto Rico Health Care System

Our actuarial analysis discussed with CMS in 2022 projects that ending the Low Wage Index Policy could reduce Medicare IPPS payments to Puerto Rico hospitals by as much as 12% over time. There would be a corresponding impact for the approximately 648,000 beneficiaries enrolled in Medicare Advantage (MA) plans, including 290,000 dual-eligible individuals, as the reduction could eventually lead to reducing MA benchmarks for Puerto Rico by approximately 5% or \$28-\$40ppm over time, varying by county. We appreciate that CMS previously finalized a 5% cap on annual reductions in a hospital wage index, but such a policy does not mitigate the fact that currently Puerto Rico hospital

⁵ *Id.*

⁶ See 84 FR 42326.

⁷ 87 FR 28369.

⁸ See Puerto Rico hospital wage data, FY 2023 IPPS Proposed Rule, Table 2- *Proposed Case-Mix Index and Wage Index Table by CMS Certification Number*.

payments and MA benchmarks rely upon the Low Wage Index Hospital Policy. We are happy to share detailed actuarial analysis upon request.

The Low Wage Index Hospital Policy has been materially helpful and supported improvements in the Puerto Rico health care system, though far more time is needed to influence health care wages in Puerto Rico in a positive and permanent fashion. Considering the need for stability in future payment expectation in order for hospitals to evolve in their cost structure incorporating higher health professional wages, we request that CMS commit to this policy for Puerto Rico through 2029 or until it is clear that Puerto Rico hospital wages are on a permanently self-sufficient higher level. The Puerto Rico health care system is in no position to absorb reductions of these levels without significant adverse impacts on provider quality, availability of services, and the availability of skilled professional workforce.

We are aware that MedPAC, notwithstanding its calls for national reform of IPPS wage index policy, has commented to CMS that MedPAC opposes the Low Wage Index Hospital Policy and in particular, its positive impact for Puerto Rico hospitals. We understand that MedPAC on principle opposes regional adjustments to Medicare payment policy. In contrast, CMS is not limited to such narrow factors in determining payment policy. We are grateful that, in making policy, CMS continues to consider the welfare of Medicare beneficiaries, the stability in the health care system and the need to reduce health disparities. MMAPA and our colleagues in the Puerto Rico health care system are united in support of Medicare payment levels that are adequate to prevent Puerto Rico from being relegated to a second-class health care system. It is clear that CMS continues to have the welfare of Medicare beneficiaries in Puerto Rico in mind through the Low Wage Index Hospital Policy and we thank CMS for that.

III. SUPPLEMENTAL PAYMENT FOR INDIAN HEALTH SERVICE AND TRIBAL HOSPITALS AND PUERTO RICO HOSPITALS FOR FY 2023 AND SUBSEQUENT FISCAL YEARS – (SECTION IV.D)

For 2023, CMS established a new supplemental payment for IHS/Tribal hospitals and hospitals located in Puerto Rico for FY 2023 and subsequent fiscal years. This payment was intended to help to mitigate the impact of the decision to discontinue the use of low-income insured days as proxy for uncompensated care costs for these hospitals and to prevent undue long-term financial disruption for these providers. In brief, the supplemental payment for a fiscal year is determined as the difference between the hospital's FY 2022 uncompensated care payment amount and its uncompensated care payment for the applicable fiscal year.

We again thank CMS for proposing a supplemental payment intended to hold Puerto Rico hospitals harmless. Nevertheless, we ask CMS to evaluate alternatives that will better support Puerto Rico hospitals in instances of increasing uninsured days. The current supplemental payment policy holds hospitals harmless only to their 2022 levels which will not help facilities if uninsured patient volume rises above 2022 levels. MMAPA would support returning to the prior method of using a proxy to determine uninsured days for Puerto Rico hospitals given the challenge of S-10 form collection.

We also wish to endorse two recent proposals of the Puerto Rico Hospital Association. First, CMS could establish a permanent supplemental payment adjustment to Factor 3 of the uncompensated care calculations for Puerto Rico hospitals except that the "amount the hospital would have received if [CMS] had continued to use low-income days as proxy for uncompensated cost" should be based on a Medicare/SSI days proxy of 40% of the hospital's Medicaid days instead of the current 14%. Second,

Puerto Rico hospitals that don't meet the empirically determined DSH threshold will have a second threshold calculation. Rather than the actual Medicare/SSI days, it would use the approved proxy SSI days used for UCC supplemental payment determination. If the sum of the Medicaid days ratio and the adjusted Medicare/SSI ratio exceeds 15%, that hospital would be eligible to receive uncompensated care cost payments, including the supplemental payment adjustments.

IV. Inflation Adjustment: Proposed FY 2024 Puerto Rico Hospital Update (Sec. V.B.2)

CMS proposes a net 2.8% payment rate increase for Puerto Rico hospitals paid under the IPPS that are meaningful electronic health record (EHR) users, reflecting the projected hospital market basket update of 3.0% reduced by a 0.2% productivity adjustment.

Given measurably high inflation and increased costs for labor, equipment, drugs and supplies, the proposed market basket update does not reflect the actual costs faced by facilities. In FY 2022, CMS finalized a market basket payment update of 2.7% based on data that did not anticipate or incorporate the record high inflation and significant increases in the costs of labor, drugs and supplies. Additionally, with more recent data available, the actual market basket update for 2022 should have been 5.7%, a 3% variance from the CMS estimates.

The proposed FY 2024 market basket payment update would severely exacerbate this problem and does not properly recognize the high financial pressures that hospitals currently face. **MMAPA supports a higher market basket payment update to reflect the actual effects of inflation on hospital operating costs.**

Sincerely,

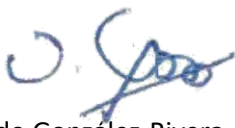
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