



October 5, 2020

Seema Verma, Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
P.O. Box 8013  
Baltimore, MD 21244–1850

*Submitted via regulations.gov*

**RE: CMS-1736-P Medicare Program: Proposed Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs. (Vol. 85, No. 156), August 12, 2020**

Dear Administrator Verma:

*Consumers First* is an alliance that brings together the interests of consumers, children, employers, labor unions, and primary care working to realign and improve the fundamental economic incentives and design of the health care system. Our goal is to ensure the nation's health care system fulfills its obligation to the people it serves by providing affordable, high-quality, cost-effective care to everyone. *Consumers First* appreciates the opportunity to provide comments on the Medicare Hospital Outpatient Payment System proposed rule for Calendar Year 2021.

Medicare payment policy often establishes a standard that is then adopted by commercial payers and Medicaid. *Consumers First* offers these comments both to strengthen hospital outpatient payment, and because the policy changes reflected in this comment letter represent an important step toward realigning fundamental economic incentives in the health care system to truly meet the needs of all families, children, seniors and adults. These payment changes could catalyze the transformational change that is needed to ensure our payment systems drive high value care across the country.

The comments detailed in this letter represent the consensus views of the *Consumers First* steering committee and the other signers. We ask that these comments, and all supporting citations referenced herein, be incorporated into the administrative record in their entirety.

Given our focus on transforming health care payment and delivery systems to ensure the system delivers the high value and affordable care consumers need, our comments are focused on three areas of the proposed rule:

- OPPS Payment for Hospital Outpatient Visits and Critical Care Services
- Requirements for the Hospital Outpatient Quality Reporting (OQR) Program

- Proposed Overall Hospital Quality Star Rating Methodology for Public Release in CY 2021 and Subsequent Years

### **OPPS Payment for Hospital Outpatient Visits and Critical Care Services**

CMS is proposing to continue implementing its site-neutral payment policy for off-campus provider-based departments which applies the Medicare Physician Fee Schedule rate for clinic visit services when provided at an off-campus provider-based department and reimbursed at the OPSS rate. *Consumers First* strongly supports CMS's efforts to continue implementing its site-neutral payment policy for off-campus provider-based hospital departments. Site-neutral payments end a problematic underlying distortion in how hospitals are paid in the United States.

Under the current hospital payment system, Medicare pays higher rates for the same services performed at Hospital Outpatient Departments (HOPDs) and other outpatient facilities compared to physician offices. Yet, physician offices can deliver many of these services with the same quality and at lower cost to the Medicare program. Hospital outpatient departments can be paid substantially more than independent physician practices for providing the same services.<sup>1</sup> This payment differential based on the site of service where care is provided has created a financial incentive for hospitals to acquire physician practices and rebrand them as HOPDs or other outpatient facilities. Importantly, the growing trend of consolidation between hospitals and physician practices is a significant driver of high and rising health care costs in the U.S. health care system.<sup>2</sup>

Over the last decade, our nation has seen a trend of formerly independent physician practices becoming affiliated with major hospital systems.<sup>3</sup> This movement is part of a larger trend of consolidation among health systems and physicians where health systems are able to use their market power to leverage higher prices for all consumers.<sup>4</sup> The purchasing of physician practices by hospital systems has resulted in costs shifting to outpatient facilities where the costs of care are substantially higher. The drive toward higher-cost hospital-based outpatient services has had a direct negative financial impact on Medicare beneficiaries and overall Medicare expenditures. Medicare beneficiaries pay higher copays at hospital outpatient departments (HOPDs) than they do in physician offices,<sup>5</sup> and HOPDs are paid more than twice as much as physicians are paid under the Medicare physician fee schedule for the same service, thereby contributing to excess Medicare expenditures.<sup>6</sup>

These are practices that run directly counter to the interests of Medicare beneficiaries and the solvency of the Medicare trust funds. Instead, providers should be reimbursed at a level that supports the most

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<sup>1</sup> 84 FR 39616

<sup>2</sup> Michael F. Furukawa, Laura Kimmey, David J. Jones et al, Consolidation of Providers into Health Systems Increased Substantially, 2016-18, Health Affairs, August 2020, Available at: <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00017>

<sup>3</sup> Jeff Lagasse, "Hospitals acquired 5,000 physician practices in a single year," Healthcare Finance, March 15, 2018, <https://www.healthcarefinancenews.com/news/hospitals-acquired-5000-physician-practices-single-year>

<sup>4</sup> Bela Gorman, Don Gorman, Jennifer Smagula, John D. Freedman, Gabriella Lockhart, Rik Ganguly, Alyssa Ursillo, Paul Crespi, and David Kadish, Why Are Hospital Prices Different? An Examination of New York Hospital Reimbursement, New York: New York State Health Foundation, December 2016, <https://nyshealthfoundation.org/wp-content/uploads/2017/11/an-examination-of-new-york-hospital-reimbursement-dec-2016.pdf>

<sup>5</sup> 84 FR 39616

<sup>6</sup> 84 FR 39616

efficient, highest quality care irrespective of the location in which it is provided. This is a foundational principle in the efficient allocation of resources.<sup>7</sup>

In 2015, through the Bipartisan Budget Act of 2015, Congress acted to mandate that new off campus provider-based hospital departments, with the exception of emergency department services, be paid at the physician fee schedule rate. CMS began implementing the payment cuts through the 2019 OPPS Final Rule and expanded the payment reductions to include existing off-campus provider-based departments for clinic visits services. Through the 2020 OPPS rule, CMS proposed to complete the two-year implementation of site-neutral payment policy,<sup>8</sup> a pathway paved forward by the July 2020 U.S. Court of Appeals for the District of Columbia ruling that the U.S. Department of Health and Human Services can legally mandate site-neutral payments to off-campus clinics.<sup>9</sup>

- ***Consumers First* supports CMS’s ongoing efforts to implement and expand site-neutral payments to all off-campus provider-based departments for clinic visits. In fact, we recommend that CMS expand site-neutral payments to all off-campus provider-based departments across a broader set of services.**
- **Additionally, we recommend that CMS continue implementing site-neutral payment not just for off-campus hospital-based departments but also for on-campus provider-based departments, freestanding and non-freestanding emergency departments, and off-campus provider-based entities.**

### **Requirements for the Hospital Outpatient Quality Reporting (OQR) Program**

The Hospital Outpatient Quality Reporting (OQR) Program is a quality data reporting program implemented by CMS for outpatient hospital services. Hospitals are required to report data using standardized measures of care to receive the full payment update to their OPPS payment rate.

To make the Medicare program more effective, *Consumers First* believes that Medicare should be a leader among other payers in driving equity into payment and care delivery, particularly as we strive to build a high-value health care system. There continues to be millions of people, and in particular Medicare beneficiaries, who live with the burden of poor health, who systematically cannot access the right care at the right time, and who receive low-quality care.<sup>10</sup>

Those facing systemic inequities disproportionately include people of color, people with low incomes, people with disabilities, and people living in distressed neighborhoods.<sup>11</sup> The COVID-19 pandemic has

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<sup>7</sup> Institute of Medicine (US) Committee on Quality of Health Care in America. Crossing the Quality Chasm: A New Health System for the 21st Century. Washington (DC): National Academies Press (US); 2001. 8, Aligning Payment Policies with Quality Improvement. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK222279/>

<sup>8</sup> 84 FR 39616

<sup>9</sup> United States Court of Appeals for the District of Columbia Circuit, American Hospital Association, et al Appellees v. Alex M. Azar, II, Secretary of Health and Human Services. Decided July 17, 2020. Available at: [https://www.cadc.uscourts.gov/internet/opinions.nsf/E27BC5B064ED8035852585A80052C843/\\$file/19-5352-1852218.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/E27BC5B064ED8035852585A80052C843/$file/19-5352-1852218.pdf)

<sup>10</sup> Institute of Medicine, Best Care at Lower Cost: The Path to Continuously Learning Health Care in America (Washington, DC: The National Academies Press, 2013), available online at <https://www.nap.edu/catalog/13444/best-care-at-lower-cost-the-path-to-continuously-learning>

<sup>11</sup> Kenan Fikri and John Lettieri, The 2017 Distressed Communities Index (Washington, DC: Economic Innovation Group, 2017), available at: <https://eig.org/wp-content/uploads/2017/09/2017-Distressed-Communities-Index.pdf>

further unveiled the harsh realities of existing disparities in health and health care in the United States, where Black, Latino and Native American communities have experienced significantly higher rates of infection and death.<sup>12</sup> Currently, 20 percent of Medicare beneficiaries are dually eligible for Medicare and Medicaid, most of whom live below the federal poverty level.<sup>13</sup> Moreover 13.7 million – or 25 percent – of Medicare beneficiaries come from communities of color including the African American, Latino, and Asian communities.<sup>14</sup> In order to ensure the health of its beneficiaries, the Medicare program should build quality and financial accountability for equity into hospital payment.

***Consumers First* recommends the following improvements to the program:**

- **Integrate health equity into the hospital OQR program by incorporating health disparity reduction quality and outcome measures including disparity-sensitive measures<sup>15</sup>**
- **Expand hospital data reporting requirements to ensure hospitals collect and report on patient social and behavioral risk data with appropriate privacy and antidiscrimination protections. This includes the accurate collection of data on race, ethnicity, primary language, geographic location, socioeconomic status, gender identify, sexual orientation, age and disability status. The collection and dissemination of these data are a critical step in implementing equity payment incentives in hospital payment. Require all measures in the OQR program to be reported and stratified by race, ethnicity, primary language, geographic location, socioeconomic status, gender identify, sexual orientation, age and disability status.**

### **Proposed Overall Hospital Quality Star Rating Methodology for Public Release in CY 2021 and Subsequent Years**

The Overall Hospital Quality Star Rating Program measures and compares hospital performance across a pre-determined set of criteria including a set of quality measures informed by the Hospital Inpatient Quality Reporting Program and the Hospital Outpatient Quality Reporting Program. The overall hospital quality star rating shows how well each hospital performed, on average, compared to other hospitals in the country.

- ***Consumers First* urges CMS to integrate health equity into the Overall Hospital Quality Star Rating Program by incorporating health disparity reduction quality and outcome measures into the set of quality measures used to determine hospitals’ comparable performance.**
- **In addition, *Consumers First* urges CMS to include in the Overall Hospital Quality Star Rating Program an evaluation of whether hospitals have collected and reported on patient**

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<sup>12</sup> Amber Hewitt, Eliot Fishman, Winnie Luo, Lee Taylor-Penn. “The Fierce Urgency of Now: Federal and State Policy Recommendations to Address Health Inequities in the Era of COVID-19”. May 2020. Available at: [https://familiesusa.org/wp-content/uploads/2020/05/HE\\_COVID-and-Equity\\_Report\\_Final.pdf](https://familiesusa.org/wp-content/uploads/2020/05/HE_COVID-and-Equity_Report_Final.pdf)

<sup>13</sup> Medicare-Medicaid Coordination Office, Medicare-Medicaid Dual Enrollment from 2006 through 2018. Available at: [https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/MMCO\\_Factsheet.pdf](https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/Downloads/MMCO_Factsheet.pdf)

<sup>14</sup> Distribution of Medicare Beneficiaries by Race/Ethnicity. State Health Facts. Kaiser Family Foundation. Available at: <https://www.kff.org/medicare/state-indicator/medicare-beneficiaries-by-raceethnicity/>

<sup>15</sup> A Roadmap for Promoting Health equity and Eliminating Disparities: The Four I’s for Health Equity. National Quality Forum, September 2017, Available at: [https://www.qualityforum.org/Publications/2017/09/A\\_Roadmap\\_for\\_Promoting\\_Health\\_Equity\\_and\\_Eliminating\\_Disparities\\_The\\_Four\\_I\\_s\\_for\\_Health\\_Equity.aspx](https://www.qualityforum.org/Publications/2017/09/A_Roadmap_for_Promoting_Health_Equity_and_Eliminating_Disparities_The_Four_I_s_for_Health_Equity.aspx)

**social and behavioral risk data with appropriate privacy and antidiscrimination protections. This would include the accurate collection of data on race, ethnicity, primary language, geographic location, socioeconomic status, gender identify, sexual orientation, age and disability status. The collection of these data are a critical step to build in financial incentives and accountability to hospital payments to reduce health disparities.**

Thank you for considering the above recommendations. Please contact Sophia Tripoli, Families USA's Director of Health Care Innovation, at [stripoli@familiesusa.org](mailto:stripoli@familiesusa.org) for further information.

Sincerely,

### **Consumers First Steering Committee**

American Academy of Family Physicians  
American Benefits Council  
American Federation of State, County and Municipal Employees  
American Federation of Teachers  
Families USA  
First Focus on Children  
Pacific Business Group on Health

### **Partner Organizations**

American Medical Student Association  
Center for Independence of the Disabled, NY  
Coalition on Human Needs  
Colorado Consumer Health Initiative  
Consumers for Affordable Health Care  
Consumers for Quality Care  
Economic Alliance for Michigan  
International Brotherhood of Teamsters  
Justice in Aging  
Missouri Health Care For All  
MomsRising  
NAACP  
National Alliance of Healthcare Purchaser Coalitions  
National Education Association  
National Partnership for Women & Families  
Network for Regional Healthcare Improvement  
San Francisco AIDS Foundation  
SC Appleseed Legal Justice Center  
Shriver Center on Poverty Law  
Small Business Majority  
West Virginians for Affordable Health Care