Federation of American Hospitals®

Charles N. Kahn III
President and CEO

July 29, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, DC 20201

Re: Mitigating the Impact of Significant, Anomalous, and Highly Suspect Billing Activity on Medicare Shared Savings Program Financial Calculations in Calendar Year 2023 [CMS–1799–P]

Dear Administrator Brooks-LaSure:

The Federation of American Hospitals (FAH) is the national representative of more than 1,000 leading tax-paying hospitals and health systems throughout the United States. The FAH members provide patients and communities with access to high-quality, affordable care in both urban and rural areas across 46 states, plus Washington, DC and Puerto Rico. Our members include teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals and provide a wide range of inpatient, ambulatory, post-acute, emergency, children's, and cancer services.

The FAH appreciates the opportunity to provide our views in response to the proposed rule "Mitigating the Impact of Significant, Anomalous, and Highly Suspect Billing Activity on Medicare Shared Savings Program Financial Calculations in Calendar Year 2023" [CMS-1799-P], 89 *Fed. Reg.* 55168 (July 3, 2024) issued by the Centers for Medicare & Medicaid Services (CMS). We appreciate CMS' commitment to the Medicare Shared Savings Program (MSSP), and we fully support the agency's proposals to address the impact of fraudulent suppliers on MSSP accountable care organizations (ACOs) and their participating hospitals, physicians, clinicians and other facilities.

As CMS notes in the proposed rule, significant, anomalous and highly suspect (SAHS) billing unfairly impacts ACOs—putting them at risk for potentially significant shared losses (or reduced shared savings) for activities that were not in their control. SAHS billing, such as that experienced by ACOs from a few DME suppliers of catheters in 2023 and earlier, inappropriately increases calculated ACO expenditures and undercuts initiatives to improve care quality and reduce expenditures. It weakens the integrity of MSSP and can have a detrimental impact on organizations' financial reconciliation for a year.

The FAH strongly supports the proposal to remove all Part A and B payments for HCPCS A4352 and A4353 from the MSSP ACO expenditure and revenue calculations for calendar year (CY) 2023, including adjustments to performance year (PY) 2023 expenditures, CY 2023 benchmark expenditures, and trend factors applied to the benchmark to determine financial performance for PY 2023. Excluding all claims for these services from both performance year and benchmark expenditures would address the issue expeditiously. However, many FAH members are concerned about inappropriate and highly suspect billing for other items, which also negatively impact ACOs and their ability to continue to participate in the MSSP program. We strongly encourage the agency to review SAHS billing for other items and services, such as billing for skin substitutes, which has seen a significant rise from 2022 to 2023 of close to 300 percent.

The impact of SAHS billing is not limited to the MSSP program. FAH members participating in other payment models, such as the Bundled Payments for Care Improvement (BPCI) Advanced model and Comprehensive Care for Joint Replacement (CJR) model, have also been severely impacted by fraudulent billing for catheters. Eleven FAH member hospitals participating in BPCI Advanced and CJR report more than $1,000,000 in SAHS billing for these codes across three performance periods (from April 2022 through September 2023). The FAH urges the agency to exclude payments for HCPCS A4352 and A4353 from the BPCI Advanced and CJR models for these performance periods, including the performance periods in 2022, just as it proposes to do with respect to the MSSP. Similarly, we encourage CMS to address SAHS billing for these catheters, and for other items that are billed in a suspect or fraudulent manner, in other value-based payment models by excluding them from expenditures for which the participating organization is at financial risk.

CMS indicated in the proposed rule that its policies, if finalized, would result in roughly a six-week delay in the issuance of initial performance year determinations and disbursement of shared savings. Any such delay is disruptive to the MSSP program, especially for ACOs that receive revenue exclusively from shared savings payments, such as small, rural, and low revenue ACOs and those serving underserved populations. We encourage the agency to finalize its proposals as promptly as possible. Should the agency adopt our suggestion to apply the same policies to the BPCI Advanced and CJR models, we recommend the following schedule for adjustments.

- For the BPCI Advanced initiative, performance periods 9 and 10 should be adjusted with the expected reconciliation provided in late November 2024. CMS should not delay the spring 2024 reconciliation.
- For the CJR model, adjustments should be made with the expected reconciliation provided in late November 2024 for the period 10/1/2022-9/30/2023.

The FAH supports CMS' efforts to provide a solution to address these issues beyond 2023, including its proposal for a permanent policy in the CY 2025 Physician Fee Schedule proposed rule (CMS-1807-P). We look forward to working with the agency to identify SAHS billing, to develop equitable solutions that protect the advancement to value-based care for beneficiaries and health care providers, to encourage greater participation in the MSSP program and other value-based care initiatives, and to improve ways for health care providers to promptly report suspected waste, fraud and abuse against the Medicare program.

* * *

Thank you for the opportunity to comment on the proposed rule. If you have any questions, please contact me or a member of my staff at 202-624-1534.

Sincerely,