October 6, 2020

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Azar

Thank you for the multiple visits to Wisconsin that you, Deputy Secretary Hargan, and Dr. Deborah Birx have made in recent months. We greatly appreciate your attention to our state, and your desire to hear from our members about what they are doing to coexist with COVID and what we believe the federal government can do to help. With the recent surge in COVID cases in our state, your attention is needed now more than ever.

We write today with growing concern over recent changes in HHS guidance on spending Provider Relief funding (PRF). We are concerned that the dramatic change in the definition of lost revenue is both inconsistent with the statute and incompatible with the flexibility hospitals need under this constantly changing COVID landscape. While we greatly appreciate HHS's desire to get relief dollars to where they are most needed, this abrupt change in guidance will not accomplish that policy goal, but will create more problems for hospitals that already are overwhelmed, not only with caring for patients, but also with new data reporting requirements, testing and PPE supply chain issues, and myriad other complications resulting from COVID.

As you know, HHS released guidance on June 19 suggesting that hospitals could use these PRF funds to make up for "any revenue that … a health care provider lost due to coronavirus." It stated that hospitals could "use any reasonable method of estimating the revenue during March and April 2020 compared to the same period had COVID-19 not appeared." This is consistent with the statute, which stated simply that the funding shall be used for COVID-related "expenses or lost revenues." However, on Sept. 19, HHS issued a new definition of lost revenue, stating that it must be "represented as a negative change in year-over-year net patient care operating income." This suggests hospitals will instead be judged against a change in their operating margins, rather than actual lost revenues, which significantly complicates how hospitals expected to account for this relief.

In Wisconsin, we estimated our hospitals and health systems experienced a $2.5 billion loss in revenues attributable to the approximately six-week period where they were not doing elective procedures, as requested by CMS and the U.S. Surgeon General. Due to this stark drop-off in patient revenues, and the uncertainty about how soon or how much hospitals and health systems would receive in relief funds, many of our members took prudent actions to cut expenses so as to not put their hospitals in financial peril at a time when they were most needed. Unfortunately, this abrupt change in guidance unfairly penalizes these hospitals for taking these actions. It has the potential to limit their ability to spend relief dollars they have long believed they will be able to accept and have already made plans for how they would allocate.

Additionally, it must be noted that Wisconsin is currently experiencing one of the most significant increases in COVID infections in the entire country – being 3rd in the nation for total COVID infections in the past seven days despite being 20th in the nation in terms of overall population. Because our COVID surge has hit later than others, our members have not had the same level of COVID related expenses as many other states to date. Our

members in Wisconsin have also received much less "high-impact" funding due to the timing of when HHS distributed those dollars. Additionally, hospitals in the states with early outbreaks would have been less likely to cut as much in expenses due the fact that they had more patient revenue coming in from COVID patients they were caring for.

We are concerned HHS's new policy will have a sort of "double whammy" on Wisconsin. Not only did our members receive less in relief than states with early high caseloads, but will they now be able to keep less of what they *did* receive while these other states are allowed to keep more? While we doubt that is the intent of this policy, it could be a very real consequence of it, despite the fact that our hospitals have just as much need to use these dollars.

While we do not have the data to determine the exact financial impact on our members, we believe HHS should pull back this policy change due to the significant confusion it has already created. We have heard concerns from some hospitals that even if the change does not lead to funding claw backs, it could create significant accounting concerns and uncertainty for current audits on the June 30th fiscal report. This would also have the potential to negatively impact hospital bond ratings, leading to further financial challenges. Hospital leaders have enough on their plate already that they should not be made to scramble to re-account for this drastic policy change.

In summary, we respectfully request HHS go back to the original guidance that is more consistent with the federal statute and allow hospitals to apply these relief dollars to actual lost revenue. All too often, our members make the best financial decisions they can with the information at hand only to have the rug swept out from under them as rules change midstream. This is unfortunately another example of that. There is enough uncertainty with this pandemic already and we do not believe HHS intended to add additional chaos on top of what hospitals are already navigating.

Thank you again for your attention to our state and for your consideration of this request.

Sincerely,

Eric Borgerding
President and CEO, WHA

Tim Size
Executive Director, RWHC

Cc: Wisconsin Congressional Delegation