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November 6, 2018

The Honorable Ron Johnson  
United States Senate  
Washington, DC 20510

The Honorable Tammy Baldwin  
United States Senate  
Washington, DC 20510

The Honorable Paul Ryan, Speaker  
U.S. House of Representatives  
Washington, DC 20515

The Honorable James Sensenbrenner  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Ron Kind  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Gwen Moore  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Sean Duffy  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Mark Pocan  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Glenn Grothman  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Mike Gallagher  
U.S. House of Representatives  
Washington, DC 20515

Dear Members of Wisconsin's Congressional Delegation,

As you may have heard, the final 2019 Outpatient Payment System (OPPS) Rule was released by CMS late last week. In September, WHA members expressed their concerns with the proposed rule to both CMS and all of you. First, and foremost, we want to thank those of you who signed onto a letter to CMS echoing our concerns about how proposed cuts in the rule would negatively impact Wisconsin's hospitals, as well as concerns that they went counter to two separate acts of Congress.

As you know, the Bipartisan Budget Act of 2015 and 21<sup>st</sup> Century Cures Act grandfathered HOPDs that were either operating or in mid-build as of 2015 at the existing payment rate. We expressed our strong objections to the rationale for these cuts, as well as the fact that CMS was giving hospitals very little time to backfill the budget holes they would create, since hospitals have budgeted out their operations at the rates Congress previously sanctioned. Like any business, hospitals must budget into the future based on logical revenue projections, and it is simply wrong for CMS to change the rules mid-game.

Unfortunately, CMS did very little to respond to these concerns in the final rule. As you may remember, we projected a \$30 million impact in 2019 to about 40 Wisconsin hospitals under the proposal to cut payments for clinic visits at off-campus hospital outpatient departments (HOPDs). The 10-year impact would climb to about \$440 million due primarily to hospitals improving care and moving more procedures from the inpatient setting to the outpatient setting as well as aging demographics meaning that more Wisconsinites will be accessing Medicare services.

In the final rule, CMS addressed these aspects of our concerns by cutting in half the cuts for 2019 but keeping the full impact in all subsequent years. ***This is woefully inadequate, as our hospitals will still collectively be expected to make up a \$15 million loss with less than two months before those cuts go into effect, not to mention the full cuts that will hit in subsequent years.***

While CMS is trying to frame this cut as a “site-neutral” payment, a recent study by KNG found that Medicare patients accessing care in HOPDs are more likely to be poorer and have more severe chronic conditions than those treated in independent physician offices. Even so, most hospitals would be willing to accept “site-neutral” payments if CMS would provide more equitable funding under Medicare elsewhere for hospital services that face higher losses. For instance, hospitals bear higher costs than other settings in order to provide 24/7 access to emergency services. They must also meet a much higher regulatory burden than other settings, including regular inspections from CMS. They remain the only place patients can go when all other settings have closed and the only setting to provide life-saving care for patients regardless of one’s insurance or ability to pay.

Unfortunately, Medicare’s payment rates increasingly have not kept up with what it costs to provide this life-saving care. We call this the hidden healthcare tax, because when the government does not pay the full cost for services, those costs are shifted onto the private sector, and this is a big reason why costs for private health insurance continue to climb. In fact, in Wisconsin, the gap between what Medicare pays and what it costs our hospitals to provide care climbed by \$300 million in the last year for which data is available: from \$1.8 billion in 2016 to \$2.1 billion in 2017. At the same time, Wisconsin hospitals continue to receive some of the highest quality marks in the nation, despite CMS spending less per Wisconsin Medicare beneficiary than it does for Medicare beneficiaries in most states. These cuts will only exacerbate that challenge.

WHA will be working with others to identify a legislative solution to this problem CMS has created and looks forward to your continued support. We hope the urgency of this situation will lead Congress to act swiftly. Please contact Jon Hoelter, WHA’s Director of Federal and State Relations at [jhoelter@wha.org](mailto:jhoelter@wha.org) or 608-268-1819 with any questions.

Sincerely,



Eric Borgerding  
Wisconsin Hospital Association  
President and CEO