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June 17, 2022

The Honorable Chiquita Brooks-LaSure,
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Room 445-G
Washington, DC 20201

RE: CMS-1771-P, Medicare Program: Hospital Inpatient Prospective Payment System, Proposed Rule, (Vol. 87, No. 90), May 10, 2022.

Dear Administrator Brooks-LaSure:

On behalf of the Suburban Hospital Alliance of New York State, which represents hospitals in New York's Hudson Valley and on Long Island, we appreciate the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) hospital inpatient prospective payment system (IPPS) proposed rule for fiscal year (FY) 2023. We have significant concerns about the proposed payment update for IPPS hospitals for FY 2023 which, together with the agency's proposed cuts to DSH payments and the dramatic increase in the proposed high-cost outlier threshold, would result in a net *decrease* in payments to IPPS hospitals in FY 2023 compared to FY 2022. In order to ensure that Medicare payments for acute care services more accurately reflect the cost of providing hospital care, we urge CMS to implement the changes below. In addition, we address the proposed 5 percent cap on year-to-year negative wage index adjustments.

Payment Update

For FY 2023, CMS proposes a market basket update of 3.1 percent, less a productivity adjustment of 0.4 percentage points, plus a documentation and coding adjustment of 0.5 percentage points, resulting in a net update of 3.2 percent. This update, coming on the heels of the FY 2022 payment update of 2.7 percent, is woefully inadequate and does not capture the unprecedented inflationary environment. This is because the market basket is a time-lagged estimate that uses historical data to forecast into the future. When historical data is no longer a good predictor of future changes, the market basket becomes inadequate. Yet, this is essentially what has been done when forecasting the FY 2022 and 2023 market basket and productivity adjustments. Indeed, with more recent data[1], the market basket for FY 2022 is trending toward 4.0 percent, well above the 2.7 percent CMS actually implemented last year. Additionally, the latest data also indicate *decreases* in productivity, not

[1] IHS Global, Inc.'s (IGI's) forecast of the IPPS market basket increase, which uses historical data through third quarter 2021 and fourth quarter 2021 forecast.

gains.[2] We urge CMS to consider the changing health care system dynamics and their effects on hospitals.

Specifically, we join the American Hospital Association and Healthcare Association of New York State (HANYS) in urging CMS to 1) implement a retrospective adjustment for FY 2023 to account for the difference between the market basket update that was implemented for FY 2022 and what the market basket is currently projected to be for FY 2022; and 2) eliminate the productivity cut for FY 2023.

The current inflationary economy combined with the COVID-19 crisis has put unprecedented pressure on our hospitals and health systems. They remain on the front lines fighting this powerful virus; our doctors and nurses continue to care for COVID-19 patients even if other industries have moved on from the pandemic. At the same time, we continue to struggle with persistently higher costs and additional downstream challenges that have emerged as a result of the lasting and durable impacts of high inflation and the pandemic. **The healthcare provider sector is uniquely constrained in its ability to raise prices to adjust for these costs – more than two-thirds of Suburban Hospital Alliance members' services are covered by Medicare and Medicaid, and most commercially-insured services are provided under multi-year contracts, with little to no opportunity to renegotiate reimbursement levels.**

Historic inflation has continued and heightened the severe economic instability that the pandemic has wrought on our region's hospitals and health systems. Indeed, the financial pressures they are experiencing are massive. Because this high rate of inflation is not projected to abate in the near term, and inflationary pressures will continue to work their way into wage expectations, it is critical to account for these challenges when considering hospital and health system financial stability in FY 2023 and beyond. **As such, the market basket updates for FY 2022 and FY 2023 are resulting in woefully inadequate reimbursements for our hospitals. We ask CMS to implement, for FY 2023, a retrospective adjustment to account for the difference between the market basket adjustment that was implemented for FY 2022 and what the market basket is currently projected to be for FY 2022.**

Additionally, we ask that CMS eliminate the productivity cut for FY 2023. The measure of productivity used by CMS is intended to ensure payments more accurately reflect the true cost of providing patient care and effectively assumes the hospital field can mirror productivity gains across the private nonfarm business sector. This has never been our member hospitals' experience, but most acutely so during the pandemic. High turnover rates and widespread use of temporary agency staff to care for patients during the course of the pandemic have instead had the effect of reducing productivity. Like inflation, rising energy costs and supply chain disruptions, these factors are not expected to improve in the next year. Therefore, we have strong concerns about the proposed productivity cut given the extreme and uncertain circumstances in which our hospitals are currently operating. **We urge CMS to use its "exceptions and adjustments" authority under Section 1886(d)(5)(I)(i) of the Act to remove the productivity adjustment for any fiscal year that was**

[2] U.S. Bureau of Labor Statistics. (May 5, 2022). Productivity and Costs, First Quarter 2022, Preliminary - 2022 Q01 Results. https://www.bls.gov/news.release/pdf/prod2.pdf.

covered under a public health emergency determination (e.g., 2020, 2021, and 2022) from the calculation of market basket for FFY 2023 and any year thereafter.

Disproportionate Share Hospital (DSH) Payments
We are concerned with CMS' proposal to decrease DSH payments—by approximately $800 million—to hospitals for FY 2023. Many hospitals in New York's suburban regions are just as financially stressed as those in urban and rural areas. Our member hospitals already incur nearly $500 million a year in bad debt expenses and charity care granted. DSH payments are critically important to filling the gaps.

We ask for more clarity on the agency's calculations for DSH payments. Specifically, we ask CMS to provide more details on the agency's assumption of small increases in discharge volume for FY 2022 and FY 2023. Although gains continue to be modest, our regions are experiencing an increase in utilization of hospital services over 2020 and 2021, due at least in part to patients resuming deferred care. Although it appears likely that volumes will remain lower than historic, pre-pandemic levels, the trends we are seeing now indicate that FY 2022 and 2023 volumes will continue to increase substantially.

Additionally, we question the agency's estimate that the uninsured rate will decrease from 9.6 percent to 9.2 percent from FY 2022 to FY 2023 when determining DSH payments. In our communities, it is clear that an *increase* in the number of the uninsured, not a decrease, will occur as the public health emergency coverage provisions begin to unwind. **We ask that CMS use more recent data and update its estimates of the Medicare DSH amount to more accurately reflect both discharge volume and the uninsured rate. This would yield figures that more accurately reflect changes in discharge volume and health insurance coverage and losses.**

High-Cost Outlier Threshold
In addition, we are concerned about the dramatic scale of the proposed increase in the high-cost outlier threshold—a 39 percent increase from the FY 2022 threshold—that would significantly decrease the number of cases that qualify for an outlier payment. We appreciate that CMS has taken steps to account for some of the pandemic-related factors that may have driven the increase but which will likely not continue fully in FY 2023. However, we urge the agency to explain in more detail the factors driving this significant increase in the IPPS high-cost outlier threshold—the largest by far in the past decade. We ask CMS to examine its methodology more closely and consider making additional, temporary changes to help mitigate the substantial increases that are still occurring in the outlier threshold.

Specifically, the Suburban Hospital Alliance urges CMS to consider one of the following alternatives:

- **Reduce the weight of actual COVID cases by 50 percent.** While CMS partially addressed this in its proposed modification of the MS-DRG relative weights by averaging two sets of MS-DRG weights (including and excluding COVID claims), more is needed since COVID cases have high charges driving the outlier threshold up; or
- **Average the current FY 2022 threshold with the newly proposed threshold.**

<u>Five Percent Permanent Cap on Wage Index Decreases</u>
CMS is proposing to apply a permanent 5 percent cap on any decrease to a hospital's wage index from the prior year, regardless of the circumstances causing the decline. This proposed change would be implemented in a budget neutral manner.

We appreciate the recognition by CMS that significant fluctuations in a region's wage index factor – whether as a result of organic labor market shifts or deliberate policy changes – are extremely disruptive to hospital finances. In recent years, for example, CMS addressed the consequences of its adoption of new geographic boundaries for metropolitan areas by capping any hospital's wage index factor decline at 5 percent.

The proposed rule would make permanent a 5 percent cap on losses but, as had been the case in FY 2021 and FY 2022, would implement this policy change in a budget-neutral manner. That is, all other hospitals would see their wage indices decline to "pay for" capping the losses of affected hospitals. That is inappropriate. **While we support capping year-to-year losses, we urge CMS to fund the stop-loss provision with new money only.**

Thank you for your consideration of our comments. If you have any questions, please contact me at wdarwell@sha-nys.org or (631) 435-3000.

Sincerely,

Wendy D. Darwell
President and Chief Executive Officer