

August 9, 2023

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: FY 2024 Inpatient Prospective Payment Systems for Acute Care Hospitals  
Disproportionate Share Hospital Payments***

Dear Administrator Brooks-LaSure:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinician partners — including more than 270,000 affiliated physicians, 2 million nurses and other caregivers — and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) remains deeply concerned over the Centers for Medicare & Medicaid Services' (CMS') policies related to disproportionate share hospital (DSH) payments in the agency's final Inpatient Prospective Payment System (IPPS) rule for fiscal year (FY) 2024. Specifically, the finalized IPPS policy results in a cut of \$957 million to DSH hospitals, which care for large numbers of underserved and historically marginalized populations. **A cut of this magnitude threatens their ability to continue providing essential services for their communities, especially during this tumultuous time of Medicaid redeterminations. Therefore, we urge the agency to allow the redetermination process to finish before enacting a DSH cut of this magnitude. Specifically, we ask CMS to maintain the uninsured rate at FY 2023 level (9.2%) in its FY 2024 DSH calculations to provide stability for these hospitals.**

The agency stated that the final payment rule builds on priorities to “provide support to historically underserved and under-resourced communities and to promote the highest



quality outcomes and safest care for all individuals.”<sup>1</sup> **However, we respectfully disagree with this statement. Indeed, the finalized DSH policies openly disregard these priorities. A cut of nearly \$1 billion to the very hospitals that provide care to underserved and under-resourced communities is simply unacceptable.**

**The AHA has repeatedly expressed concerns over CMS’ remarkable lack of transparency regarding how it and the Office of the Actuary (OACT) are calculating DSH payments.** As we have communicated before, the agency’s lack of transparency is particularly troubling because Congress has generally foreclosed subsequent review, making the adequacy and completeness of notice-and-comment rulemaking that much more important from a constitutional due-process perspective. In addition, in a year with turbulent coverage losses, we urged CMS to carefully consider its reliance on current data sources and methodologies to estimate the rate of the uninsured. Data and projections that have previously worked when coverage levels were more stable may no longer be adequate during these times of turmoil. Specifically, the agency estimated a DSH payment cut of \$115 million in the April proposed rule. This was a result of projecting an uninsured rate of 9.2% for FY 2024, which is used as a factor to determine the pool of uncompensated care payments to be distributed. However, the agency instead finalized a DSH payment cut of \$957 million as a result of an updated projection that the uninsured rate would fall to 8.3% in FY 2024.

In the final rule, as a response, the agency directed readers to National Health Expenditures Account (NHEA) projections and methodologies. It also directed readers to the OACT memorandum certifying the rate of uninsured. **However, these documents do not provide nearly sufficient detail. We continue to have concerns over the uninsured rate used to determine FY 2024 DSH payments. Specifically, there remains a significant lack of transparency over how the effects of the pandemic and the subsequent Medicaid redetermination process are added to NHEA’s model estimate.** For example, the NHEA states that as a final step in its projection process, legislative impacts and the effects of the COVID-19 pandemic are projected separately and added onto the model estimates.<sup>2</sup> However, it does not go on to describe *how* these impacts are incorporated.

Furthermore, the agency states, “many of those who were not disenrolled due to the [Medicaid] continuous enrollment requirement over 2020-2023, but who will be now due to the redeterminations process, *already have overlapping comprehensive coverage from other sources* [emphasis added] (including private health insurance, the Children’s

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<sup>1</sup> CMS (August 1, 2023). New CMS Rule Promotes High-Quality Care and Rewards Hospitals that Deliver High-Quality Care to Underserved Populations. <https://www.cms.gov/newsroom/press-releases/new-cms-rule-promotes-high-quality-care-and-rewards-hospitals-deliver-high-quality-care-underserved>

<sup>2</sup> NHEA Methodology (June 14, 2023). “Projections of National Health Expenditures and Health Insurance Enrollment: Methodology and Model Specification.” <https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/downloads/projectionsmethodology.pdf>

Health Insurance Program, or Medicare).”<sup>3</sup> **We disagree with this conclusion.** We question how accessible other forms of coverage are, such as employer-sponsored insurance (ESI) or the Children’s Health Insurance Program, when there has been reports of burdensome renewal processes and the continued erosion of ESI.<sup>4, 5</sup> **There has also been substantial research support to indicate that a significant proportion of those leaving Medicaid as a result of the redetermination process will not have other coverage, as we have previously [commented](#).** For example, the Congressional Budget Office (CBO) estimates that 6.2 million people leaving Medicaid because of the pandemic unwinding will become uninsured, and that the uninsured rate will increase to 10.1% by 2033.<sup>6</sup>

As the AHA explained in its comment letter, the Department of Health and Human Services’ (HHS) own data and public statements contradict the NHEA data and OACT’s conclusions. For example, in a recent letter to state Governors, Secretary Becerra stated he was “deeply concerned with the number of people unnecessarily losing coverage.”<sup>7</sup> HHS itself estimated that 15 million individuals will leave the program once Medicaid’s continuous enrollment provision comes to an end with 8.2 million needing to transition to another coverage source.<sup>8</sup> We are particularly concerned that HHS has not explained why it chose to rely on NHEA data here over these other studies — including its own. See *Environmental Health Trust v. FCC*, 9 F.4th 893, 908 (D.C. Cir. 2021) (“[W]hile an agency is not obliged to respond to every comment... the studies in the record to which Petitioners point do challenge a fundamental premise of the Commission’s decision” (quotation marks omitted)). Not only does the agency’s silence in the face of contrary data raise concerns about the administrative process here, see *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (an agency’s failure to “examine the relevant data” is a factor in determining whether the decision is “arbitrary”), but it suggests that HHS may have cherry-picked facts to support its preferred policy conclusion.

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<sup>3</sup> CMS OACT Certification of Rates of Uninsured (July 3, 2023). <https://www.cms.gov/files/document/certification-rates-uninsured-fy-2024-final-rule.pdf>

<sup>4</sup> Washington Post (July 28, 2023). Nearly 4 million in U.S. cut from Medicaid, most for paperwork reasons. <https://www.washingtonpost.com/health/2023/07/28/medicaid-unwinding-pandemic/>

<sup>5</sup> Kaiser Family Foundation (2022). Employer Health Benefits 2022 Annual Survey. <https://files.kff.org/attachment/Report-Employer-Health-Benefits-2022-Annual-Survey.pdf>

<sup>6</sup> Congressional Budget Office (May 2023). CBO Publishes New Health Insurance Coverage Projections for 2023 to 2033. <https://www.cbo.gov/publication/59132>

<sup>7</sup> HHS (June 12, 2023). Letter to U.S. Governors from HHS Secretary Xavier Becerra on Medicaid Redeterminations <https://www.hhs.gov/about/news/2023/06/12/letter-us-governors-from-hhs-secretary-xavier-becerra-medicaid-redeterminations.html>

<sup>8</sup> Assistant Secretary for Planning and Evaluation, HHS (August 2022). Unwinding the Medicaid Continuous Enrollment Provision: Projected Enrollment Effects and Policy Approaches. [https://aspe.hhs.gov/sites/default/files/documents/404a7572048090ec1259d216f3fd617e/aspe-end-mcaid-continuous-coverage\\_IB.pdf](https://aspe.hhs.gov/sites/default/files/documents/404a7572048090ec1259d216f3fd617e/aspe-end-mcaid-continuous-coverage_IB.pdf)

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As of Aug. 3, at least 3.8 million Medicaid enrollees have been disenrolled.<sup>9</sup> Studies have shown that nearly two-thirds of people had a period of uninsurance in the year following disenrollment.<sup>10</sup> Furthermore, when surveyed, about one in four adults with Medicaid as their only source of coverage would not know where to look for coverage and 15% said they would be uninsured.<sup>11</sup> **We know from HHS's own public statements that it is concerned about these early trends. For this reason, it is implausible for us to understand OACT's forecast of a decrease in the uninsured rate for next year during the Medicaid redetermination process. Therefore, consistent with HHS' own data and projections, we urge CMS to allow Medicaid redetermination processes to finish and to maintain the uninsured rate at the FY 2023 level (9.2%) in its DSH calculations for FY 2024.**

Please contact me if you have questions or feel free to have a member of your team contact Shannon Wu, AHA's senior associate director of policy, at [swu@aha.org](mailto:swu@aha.org).

Sincerely,

/s/

Stacey Hughes  
Executive Vice President

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<sup>9</sup> Kaiser Family Foundation (August 3, 2023). Medicaid Enrollment and Unwinding Tracker.

<https://www.kff.org/medicaid/issue-brief/medicaid-enrollment-and-unwinding-tracker/>

<sup>10</sup> Kaiser Family Foundation (January 25, 2023). What Happens After People Lose Medicaid Coverage?

<https://www.kff.org/medicaid/issue-brief/what-happens-after-people-lose-medicaid-coverage/>

<sup>11</sup> Kaiser Family Foundation (May 24, 2023). The Unwinding of Medicaid Continuous Enrollment: Knowledge and Experiences of Enrollees. <https://www.kff.org/medicaid/poll-finding/the-unwinding-of-medicaid-continuous-enrollment-knowledge-and-experiences-of-enrollees/>