799 9th Street NW
Suite 210
Washington, DC 20001

T (202) 354-2600
vizientinc.com

vizient®

May 1, 2023

Submitted electronically via: www.regulations.gov

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Re: Medicare Disproportionate Share Hospital Payments: Counting Certain Days Associated with Section 1115 Demonstrations in the Medicaid Fraction (CMS-1788-P)

Dear Administrator Brooks-LaSure,

Vizient, Inc. appreciates the opportunity to comment on the Medicare Disproportionate Share Hospital Payments: Counting Certain Days Associated with Section 1115 Demonstrations in the Medicaid Fraction (RIN 0938-AV17) (hereinafter "Proposed Rule") which proposes changes to how Medicare disproportionate share hospital (DSH) payments are calculated. As noted in prior comments, Vizient continues to raise concerns with the agency's policy proposals related to the calculation of the Medicaid fraction, as it would negatively impact certain hospitals and the communities they serve.

Background

Vizient, Inc. provides solutions and services that improve the delivery of high-value care by aligning cost, quality, and market performance for more than 60% of the nation's acute care providers, which includes 97% of the nation's academic medical centers, and more than 20% of ambulatory providers. Vizient provides expertise, analytics, and advisory services, as well as a contract portfolio that represents more than $130 billion in annual purchasing volume, to improve patient outcomes and lower costs. Headquartered in Irving, Texas, Vizient has offices throughout the United States.

Recommendations

In the Proposed Rule, CMS provides policy changes that would lower the numerator[1] used in

[1] The numerator for the Medicaid fraction is Medicaid eligible patient days that are not entitled to Medicare Part A and C.

the Medicaid fraction (i.e., CMS will "regard as eligible" for Medicaid fewer patient days[2]) which is used to determine Medicare DSH payments. CMS justifies these changes because states have used various methods for increasing access to Medicaid benefits, including use of the Section 1115 Demonstration program, to provide a different set of benefits for beneficiaries while receiving waivers for other requirements. CMS believes that individuals receiving care through a demonstration program may not be receiving "health insurance" but are, instead, being given access to medical care. While Vizient appreciates the need for CMS to adapt federal policy to respond to state activity, we are concerned that the finalization of the Proposed Rule would cause significant disruption to hospitals in states that leverage the flexibilities provided by the Section 1115 Demonstration program.

Scope of Services Covered

In the Proposed Rule, CMS proposes to revise the way it calculates the Medicaid fraction of the Medicare DSH calculation for patients not receiving comprehensive inpatient benefits under a Section 1115 Demonstration. Under this proposal, hospitals could only count patient days in the numerator of the Medicaid fraction for individuals receiving benefits under a Section 1115 Waiver if the patient directly receives either inpatient hospital insurance coverage or premium assistance that covers 100% of the patient's premium costs for insurance that includes coverage for inpatient services – unless the patient is not also entitled to Medicare Part A. Specifically, CMS seeks to exclude patients who may receive partial coverage under an 1115 waiver from the count of days in the Medicaid fraction.

As a result of this proposed change to the Medicaid fraction, hospitals in some states with Section 1115 waivers would see reductions to their Medicare DSH payments as fewer patients would be included in the Medicaid fraction (the numerator). Consistent with previous comments, Vizient is concerned that this policy shift, if finalized, would disrupt the DSH calculation for many hospitals and health systems in states with certain 1115 waivers and, ultimately, negatively impact providers' ability to provide care.

In addition, this proposed policy may also negatively impact eligibility for the 340B Drug Pricing Program for covered entities, where a hospital's DSH status can determine eligibility. If a hospital's disproportionate share adjustment percentage drops too low, that hospital could be excluded from the program. Vizient is concerned that the Proposed Rule could have far-reaching consequences given the critical role of the 340B Program in helping hospitals increase access to care. Therefore, Vizient recommends CMS work with stakeholders, including providers, to more carefully evaluate the implications of the Proposed Rule.

---

[2] In its initial interpretation in the FY 2000 IPPS final rule, CMS stated that it would "regard as eligible" for Medicaid certain beneficiaries who were included under a state plan – those that would not be technically eligible for Medicaid, but through state plans were receiving health insurance that resembled Medicaid. In the FY 2004 IPPS final rule, CMS stated that it intended to only include beneficiaries who received the same or similar benefits under a state plan and exclude those beneficiaries who received Medicaid-like benefits that were not comprehensive.

Coverage Funded by an Uncompensated Care Fund

CMS also proposes excluding patients whose inpatient hospital costs are paid for from an uncompensated care fund or undercompensated care pool authorized by a Section 1115 Demonstration from the numerator of the Medicaid fraction. Uncompensated care funds are not matched by the federal government, thus CMS states that these payments do not provide a patient with health insurance and therefore should not be included in the Medicaid fraction. Vizient is concerned that removing these types of patient days from the DSH calculation will only exacerbate the financial challenges hospitals continue to endure and could threaten their ability to provide essential services to all patients.

Further, the stated purpose of the Section 1115 Demonstrations is to "demonstrate and evaluate state-specific policy approaches to better serving Medicaid populations."[3] Proposals undergo a thorough evaluation with public input at both the state and federal level. States commonly request and receive extensions of the waivers when the programs are successful. This Proposed Rule may undermine the purpose of the Section 1115 Demonstration program and unfairly impact hospitals in states that chose to design waivers tailored to enhance care for their state's most vulnerable individuals.

Conclusion

Vizient thanks CMS for the opportunity to share feedback regarding the Proposed Rule. We reiterate our concerns regarding the harm and disruption that the Proposed Rule will cause to hospitals and patients in certain states, if finalized. Vizient membership includes a wide variety of hospitals ranging from independent, community-based hospitals to large, integrated health care systems that serve acute and non-acute needs. Individually, our members are integral partners in their local communities, and many are ranked among the nation's top health care providers. In closing, on behalf of Vizient, I would like to thank CMS for providing us the opportunity to comment on the Proposed Rule. Please feel free to contact me or Emily Jones at Emily.Jones@vizientinc.com if you have any questions or if Vizient may provide any assistance as you consider these issues.

Respectfully submitted,

Shoshana Krilow
Senior Vice President of Public Policy and Government Relations
Vizient, Inc.

[3] https://www.medicaid.gov/medicaid/section-1115-demonstrations/about-section-1115-demonstrations/index.html