

September 1, 2023

Submitted via email to: www.regulations.gov

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
7500 Security Blvd
Baltimore, MD 21244

Re: Medicare Program; Hospital Outpatient Prospective Payment System: Remedy for the 340B-Acquired Drug Payment Policy for Calendar Years (CYs) 2018-2022 (CMS-1793-P)

Dear Administrator Brooks-LaSure,

Vizient, Inc. appreciates the opportunity to respond to the Centers for Medicare and Medicaid Services (CMS) proposed rule, “Medicare Program; Hospital Outpatient Prospective Payment System: Remedy for the 340B-Acquired Drug Payment Policy for Calendar Years 2018-2022” (hereinafter, “Proposed Rule”). This Proposed Rule has a significant impact on our provider members and the patients they serve. Given the financial uncertainty and increased costs that hospitals continue to endure, Vizient appreciates that CMS has noted that hospitals could receive payments by the end of 2023 or early 2024. However, we have several concerns with the agency’s proposed remedy that we hope the agency will consider as it finalizes the Proposed Rule.

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

Vizient appreciates the agency’s effort to gain stakeholder feedback in crafting a remedy in response to the June 2022 [Supreme Court decision](#), which effectively decided that CMS unlawfully reduced reimbursement rates for 340B hospitals. In the Proposed Rule, CMS provides a remedy in response to this decision which would impact reimbursement for CYs 2018-2022. CMS proposes a lump sum payment to providers totaling approximately \$9 billion and a negative Outpatient Prospective Payment System (OPPS) adjustment (-0.5%) for approximately 16 calendar years. Vizient believes immediate repayment to providers is sorely needed given hospitals ongoing financial struggles but disagrees with the agency’s position

that this repayment must be budget neutral.¹ Additionally, we believe additional clarity from CMS is needed regarding managed care plans' reimbursement to hospitals and assurances that hospitals will be appropriately reimbursed, such as if a Medicare Administrative Contractor (MAC) miscalculates the amount owed to a hospital.

Lump Sum Payment

In the Proposed Rule, CMS notes that it would repay hospitals a one-time lump sum payment amount, which includes the additional amount that hospitals would have received in beneficiary cost-sharing. Vizient agrees with these concepts and encourages the agency to finalize policy that includes these elements. Similarly, Vizient appreciates that CMS has proposed policy which does not require that all claims be reprocessed.

However, Vizient is extremely concerned that the Proposed Rule does not consider repayments to providers from Medicare Advantage Organizations (MAOs). As CMS may be aware, MAOs have been refusing hospital requests to pay hospitals what they are owed as a result of the Supreme Court decision. Vizient urges CMS to clarify how it will assure hospitals receive the full amount due, particularly from MAOs.

In addition, Vizient appreciates that CMS has provided Appendix AAA to help inform hospitals regarding potential payment amounts due. As these numbers may change, such as if a hospital learns of an error or as there is more recent information from the MAC that could decrease the provider's net payment amount, Vizient encourages CMS to clarify with MACs a process to ensure hospitals are paid the full amount provided by CMS without undue delay. Vizient is concerned that allowing MACs to withhold payment may result in disputes between providers and MACs and unreasonably delay payments due to providers. Vizient recommends CMS clarify that MACs must pay the amount specified by the agency and not permit MACs to withhold payment.

Negative Payment Adjustment

In the Proposed Rule, CMS indicates it would apply a -0.5% payment adjustment to OPPS due to agency's interest in making budget neutral the remedial payments to 340B hospitals. Vizient questions the agency's interpretation that it must provide policy that is budget neutral. Vizient is also concerned that such a reduction in OPPS payments would be financially devastating to hospitals who are still struggling to stay afloat. As such, Vizient urges CMS to not impose any negative payment adjustments and to only provide lump sum payments.

Should the agency disagree and proceed with finalizing a negative payment adjustment, Vizient suggests that the agency make several modifications. As proposed, CMS would impose a -0.5% reduction to OPPS payments which, as CMS estimates, would last approximately 16 years. However, Vizient is concerned that limitations and challenges in

¹ <https://www.kaufmanhall.com/insights/research-report/national-hospital-flash-report-july-2023>

accurately projecting the recoupment period are not adequately addressed in the Proposed Rule. For example, there is significant uncertainty regarding future case mix as a result of changes to Medicaid, among other factors, that could impact the agency's projections. Such uncertainty regarding the duration of the cuts creates significant challenges for hospitals' long-term financial plans. Again, should CMS disregard our recommendations to not impose a negative payment adjustment, we suggest the agency work with stakeholders to reduce the overall amount and ensure that payments are spread over at least 16 years, including if this means reducing the amount of the annual reduction.

In addition, CMS proposes to impose the negative payment adjustment in CY 2025. As previously noted, hospitals continue to struggle financially, with May 2023 operating margins ranging from -1.1% to 0.3%.² Vizient urges CMS to carefully consider this information, as patient access to care could be jeopardized should the agency impose such disruptive payment reductions.

Conclusion

Vizient thanks CMS for the opportunity to share feedback in response to the Proposed Rule.

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 care needs. Additionally, many are specialized, including academic medical centers and pediatric facilities. 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 the CMS for providing us the opportunity to comment on the Proposed Rule. Please feel free to contact me or Jenna Stern at jenna.stern@vizientinc.com, if you have any questions or if Vizient may provide any assistance as you consider these issues.

Respectfully submitted,



Shoshana Krilow

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Vizient, Inc.

² https://www.kaufmanhall.com/sites/default/files/2023-06/National-Hospital-Flash-Report_June-2023.pdf