MACPAC

September 13, 2016

The Honorable Sylvia Mathews Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

RE: CMS-2399-P Medicaid Program; Disproportionate Share Hospital Payments—Treatment of Third Party Payers in Calculating Uncompensated Care Costs

The Medicaid and CHIP Payment and Access Commission (MACPAC) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services (CMS) proposed rule, Medicaid Program; Disproportionate Share Hospital Payments—Treatment of Third Party Payers in Calculating Uncompensated Care Costs, 81 Fed. Reg. 53980 (August 15, 2016). MACPAC has devoted considerable time and resources to analysis of Medicaid disproportionate share hospital (DSH) payments given its statutory requirement to report annually on these payments and their relationship to hospital uncompensated care and other factors identified by Congress.

The proposed rule clarifies CMS policy for calculating Medicaid uncompensated care for Medicaid DSH purposes. Specifically, CMS proposes that Medicaid uncompensated care, sometimes referred to as Medicaid shortfall, would be the difference between a hospital's costs of care for all Medicaid-eligible patients and all payments that the hospital receives for these patients from Medicaid and third-party payers, including Medicare. CMS does not anticipate that this rule will have a significant financial effect on providers because it codifies existing policies.

In clarifying that hospitals should take into account third-party payments for Medicaid eligible patients, the proposed rule would ensure consistency in how Medicaid shortfall is calculated and provide a more complete measure of the financial impact of these patients on hospital finances. It is important to note, however, that under this proposal other factors that affect hospital costs associated with Medicaid patients would remain unaccounted for when calculating Medicaid DSH. These include certain costs of physician and clinic services provided by hospitals. They also include provider contributions toward the non-federal share of DSH payments through health care-related taxes and other mechanisms, which affect their net Medicaid payments. The lack of complete and timely data on all types of Medicaid payments and costs

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creates substantial challenges to better targeting DSH payments to hospitals with disproportionate levels of uncompensated care.

A large number of Medicaid enrollees have additional sources of insurance coverage that would be considered third-party payers under this proposed rule. The Government Accountability Office estimates that out of the 56 million people enrolled in the Medicaid program in 2012, 7.6 million had private coverage and 10.6 million Medicaid enrollees had access to other public coverage, including Medicare and veterans' and military health programs. Individuals who are dually eligible for Medicare and Medicaid are particularly likely to be admitted to the hospital, although their costs for hospital care are predominately paid for by Medicare rather than Medicaid.

MACPAC's analysis of DSH audit data confirms that states are already including some additional third-party payments in their calculations of Medicaid shortfall. For example, in our 2016 *Report to Congress on Disproportionate Share Hospital Payments*, we found that the payments for Medicaid enrollees reported on DSH audits in 2011 were about 21 percent higher than Medicaid payments reported on Medicare cost reports for the same hospitals, likely because of the inclusion of third-party payments. However, because third-party payments are not reported separately on DSH audits, we cannot verify that these payments are the source of the discrepancy.

To better understand Medicaid shortfall, more transparency in Medicaid hospital payments is needed. In our 2016 report to Congress on Medicaid DSH payments, the Commission recommended that the Secretary collect and report hospital-specific data on all types of Medicaid payments for all hospitals that receive them. In addition, the Commission recommended that the Secretary collect and report data on the sources of non-federal share necessary to determine net Medicaid payments at the provider level. Such reporting would help ensure that DSH payments are targeted consistent with their original statutory intent.

We appreciate the opportunity to provide comments on this proposed regulation.

Sincerely,

Sara Rosenbaum, JD
Chair

cc: The Honorable Orrin G. Hatch, Chairman, Committee on Finance, U.S. Senate
The Honorable Ron Wyden, Ranking Member, Committee on Finance, U.S. Senate
The Honorable Fred Upton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives
The Honorable Frank Pallone Jr., Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives