AMERICAN ACADEMY OF FAMILY PHYSICIANS

September 19, 2018

Seema Verma, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–1695–P
P.O. Box 8013
Baltimore, MD 21244–1850

Dear Administrator Verma:

On behalf of the American Academy of Family Physicians (AAFP), which represents 131,400 family physicians and medical students across the country, I write in response to the proposed rule regarding the 2019 hospital outpatient prospective payment system (OPPS) as published by the Centers for Medicare & Medicaid Services (CMS) in the July 31, 2018, *Federal Register*.

In section X.B. of the proposed rule, CMS discusses a proposal to control for unnecessary increases in the volume of outpatient services by paying for clinic visits furnished at an off-campus provider-based department (PBD). CMS proposes that these services be paid at an amount equal to the site-specific Medicare physician fee schedule payment rate for nonexcepted items and services furnished by a nonexcepted off-campus PBD. Specifically, CMS proposes to pay for HCPCS code G0463 (Hospital outpatient clinic visit for assessment and management of a patient) when billed with modifier ''PO'' at an amount equal to the appropriate site-specific Medicare physician fee schedule payment rate. By reducing payment differences between sites, Medicare is projected to save $610 million while patients will save $150 million in lower copays in 2019.

Payment disparities across different sites of service create unjustified financial stress on patients and the Medicare program. Not only have Medicare beneficiaries been forced to pay more at hospital outpatient departments, but vertical integration has caused many community clinics to close their doors, ultimately undercutting patients' right to choose where they receive their care. The cost of care should be the same regardless of the setting patients choose. **The AAFP therefore praises CMS for this proposal since it increases the sustainability of the Medicare program and reduces costs for Medicare patients**. We strongly urge CMS to finalize this policy since it would reduce payment differences between sites of service and would enable Medicare beneficiaries to make more informed healthcare decisions by making costs more transparent.

The AAFP continues to fully support CMS efforts to align payment policies for physicians in independent practice with those owned by hospitals. The AAFP encourages CMS to also consider site-of-service payment parity polices from a broader perspective. Namely, CMS should not pay more for the same services in the inpatient, outpatient, or ambulatory surgical center setting than in the physician office setting. **The AAFP encourages CMS to create incentives for services to be performed in the most cost-effective location, such as a physician's office.** The AAFP considers the artificial distinction between "inpatient," "outpatient," and other sites of service as a product of the equally artificial distinction between Medicare's Part A and Part B. The AAFP calls for policies that

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progress beyond this silo mentality and instead pay for health care services in a more consistent and equitable manner.

Like CMS, we believe that the intent of section 603 of the *Bipartisan Budget Act* of 2015 is to curb the practice of hospital acquisition of physician practices that then result in receiving additional Medicare payment for similar services. The AAFP supported CMS' original proposal, made in 2016, to pay nonexcepted, off-campus PBDs or excepted off-campus PBDs that provide nonexcepted items and services under the MPFS at the non-facility rate for 2017. We continue to believe that this was a reasonable response consistent with section 603 of the *Bipartisan Budget Act*.

Although we support CMS's proposal, we note that the payment methodology for 2019 will not assure equal payments for the same service, regardless of site of service. As noted in the proposed rule for the Medicare physician fee schedule (MPFS), the MPFS relativity adjuster reflects the overall relativity of the applicable payment rate for nonexcepted items and services furnished in nonexcepted off-campus provider-based departments (PBDs) under the MPFS, compared with the rate under the OPPS. The actual relativity for individual items and services may vary. That means hospitals may still be incentivized to buy physician practices based on the mix of services they provide and bill for them as PBDs at Medicare rates higher than would have been paid had the practice not been bought by the hospital, which is contrary to the intent of section 603. Equalizing payments "in the aggregate" still encourages hospitals to make business decisions that run counter to the public interest and the goals of the Medicare program.

Thus, we continue to support an approach like the one that CMS initially proposed for CY 2017. Under this approach, CMS would pay nonexcepted off-campus PBDs for their nonexcepted items and services at a true MPFS-based rate that would reflect the relative resources involved in furnishing the services. To the extent CMS wants to control for unnecessary increases in the volume of outpatient services, it could extend that rate to all off-campus PBDs, just as it has proposed to do for clinic visits. For most services, this MPFS-based rate would equal the non-facility payment rate under the MPFS minus the facility payment rate under the MPFS for the service in question. For other services for which CMS does not provide separate payment under the MPFS, if payment is made under OPPS, this MPFS-based rate would equal the MPFS non-facility rate. For still other services, the technical component rate under the MPFS would serve as the MPFS-based rate. Such an approach would, in fact, equalize payment rates between physician offices and off-campus PBDs on a procedure-by-procedure basis, which is consistent with the AAFP's vision for how Medicare payment should be designed.

We appreciate the opportunity to make these comments. Please contact Robert Bennett, Federal Regulatory Manager, at 202-232-9033 or rbennett@aafp.org, with any questions or concerns.

Sincerely,

John Meigs, Jr., MD, FAAFP
Board Chair