December 22, 2016

Andy Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2402-P
P.O. Box 8016
Baltimore, MD 21244-8016

Subject: Medicaid Program; The Use of New or Increased Pass-Through Payments in Medicaid Managed Care Delivery Systems, CMS-2402-P

Dear Acting Administrator Slavitt:

I am writing on behalf of the National Association of Urban Hospitals to convey our views on the proposed rule addressing the use of new or increased pass-through payments in Medicaid managed care delivery systems (*Federal Register*, Volume 81, Number 225, November 22, 2016, pp. 83777-83786).

While NAUH understands the desire of the Centers for Medicare & Medicaid Services (CMS) to establish parameters for the use of pass-through payments from Medicaid managed care organizations to providers and to regulate, under the terms of this year's Medicaid managed care final rule, the manner in which such payments are to be phased out over a period of ten years, we disagree with how this proposed rule calls for doing this and therefore oppose the regulation as it has been proposed.

When the rule introducing the phase-out of pass-through payments was finalized, CMS assured states that this phase-out would take place from 2017 through 2027 and that it would not intervene during that period to accelerate this transition. In NAUH's view, however, this proposed rule does precisely that by setting July 5, 2016 as the baseline for future Medicaid managed care pass-through payments. We believe this is inappropriate for two reasons: first, because July 5, 2016 is before the ten-year transition period even begins; and second, because this arbitrary date has resulted in some states that did not know a baseline date was to be introduced finding themselves in the middle of rate negotiations with managed care plans and without final proposed rates submitted to CMS by this new, unexpected, and unannounced deadline. While we recognize that July 5, 2016 is the implementation date of the new managed care regulation, we do not see the relationship between that implementation date and the establishment of a deadline for determining the baseline for future Medicaid managed care pass-through payments. These pass-through payments are negotiated between the states and their participating managed care providers and then paid to those providers while the state submits those proposed rates to CMS for review and approval. While most states had already submitted their proposed rates to CMS by July 5, we understand that a number of states did not. We are not aware of any suggestion that these states were attempting to

21351 Gentry Drive, Suite 210, Sterling, VA 20166
Phone: 703-444-0989, Fax: 703-444-3029
www.nauh.org

“game” the system in any way. To the contrary, we believe their failure to submit proposed payments prior to July 5 reflects nothing more than the timetable through which they were publishing RFPs for managed care organizations to serve their Medicaid population, selecting winning bidders, and then negotiating rates, after which they would have submitted those proposed rates to CMS for review and approval. Most important of all, these states had no reason to believe that July 5, 2016 was to be a date of any consequence at all in this regard and no reason to treat it as a deadline they should respect and meet.

The proposed approach also appears to contradict long-time CMS practice for allowing states to adjust and amend actuarially sound capitation rates retroactively. Some states would be denied this traditional opportunity under the terms of the proposed rule, effectively changing the rules of this process in mid-stream. Setting limits based on prior rates is harmful and inconsistent with customary practice.

This proposed rule, in effect, changes the transition period for the phase-down of hospital pass-through payments and would permit only those states that had submitted rate proposals to CMS by July 5, 2016 to revise those payments for their new baseline. CMS gave states no advance notice of this deadline – not even in separate guidance issued after the Medicaid managed care rule was final that reiterated CMS’s desire to give states time to plan their transitions and that even confirmed that the effective date for the enforcement of the phase-down of pass-through payments was July 2017. For these reasons, NAUH respectfully urges CMS either to withdraw the proposed regulation or to revise it in a manner that gives any states that did not submit rate proposals to CMS by July 5, 2016 the same opportunity other states had. We believe this is only fair.

The National Association of Urban Hospitals advocates for adequate recognition and financing of private, non- profit, urban safety-net hospitals that serve America’s needy urban communities. These urban safety-net hospitals differ from other hospitals in a number of key ways: they serve communities whose residents are much older and poorer; they are far more reliant on Medicare and Medicaid for revenue; they provide far more uncompensated care; and unlike public safety-net hospitals, they have no statutory entitlement to local or state funds to underwrite their costs. NAUH’s role is to ensure that when federal officials make policy decisions, they understand the implications of those decisions for these distinctive urban safety-net hospitals. NAUH pursues its mission through a combination of vigorous, informed advocacy, data-driven positions, and an energetic membership with a clear stake in the outcome of public policy debates.

NAUH appreciates the opportunity to present these comments to CMS and invites any questions you may have about the concerns we have raised.

Sincerely,

Ellen J. Kugler, Esq.
Executive Director