Puerto Rico Health Care Community Letter on Part A IPPS 2025 Interim Final Rule

November 29, 2024

VIA REGULATIONS.GOV FILING

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS 1808-IFC
P.O. Box 8013
Baltimore, MD 21244-8013

RE: Ongoing Work to End the Downward Spiral in Medicare Low Wage Index that Undercuts Adequate Care for Beneficiaries

The Puerto Rico Health Care Community writes to comment on the "*Changes to the FY 2025 Hospital Inpatient Prospective Payment System (IPPS) Rates Due to Court Decision*" Interim Final Action with Comment Period issued as a result of the decision by Court of Appeals for the D.C. Circuit in *Bridgeport Hospital v. Becerra*. We wish to thank the Centers for Medicare & Medicaid Services (CMS) for your time and attention over the last 6 years on fixing the current wage index system that perpetuates and exacerbates the disparities between high and low wage index hospitals.

I. SUPPORT IN THE SHORT-TERM FOR CMS' PROPOSED TRANSITIONAL PAYMENT EXCEPTION FOR LOW WAGE HOSPITALS IMPACTED BY FY 2025 REVISIONS

Beginning in FY 2020, CMS increased the wage index for hospitals with a wage index value below the 25th percentile wage index value for a fiscal year by half the difference between the otherwise applicable final wage index value for a year for that hospital and the 25th percentile wage index value for that year across all hospitals (the low wage index hospital policy). The Puerto Rico Health Care Community strongly endorsed this policy at the time, and its extension in FY 2024, as essential to the sustainability of hospitals in Puerto Rico as well as the ability to ensure quality, equitable health care to all Medicare beneficiaries in Puerto Rico, whether in Original Medicare or Medicare Advantage (MA).

On July 23, 2024, the Court of Appeals for the D.C. Circuit held that CMS lacked authority to adopt the low wage index hospital policy implemented for FY 2020, which the court calls a "wage-index redistribution policy"[1], and that the policy must be vacated. CMS has therefore recalculated the IPPS hospital wage index to remove the low wage index hospital policy for FY

[1] Bridgeport Hosp. v. Becerra, 108 F.4th 882, 887–91 (D.C. Cir. 2024).

2025. CMS also proposes to establish a transition policy for hospitals significantly impacted by the removal of the low wage index hospital policy.

We support CMS' decision to cap at 5% the annual decrease in wage index applied to any one individual hospital impacted by the change, in a non-budget neutral manner.[2] Even with this transition policy, all 52 acute care hospitals in Puerto Rico face a cut of 2.8% in Medicare payments for operating costs and a cut of 3.6% in Medicare capital payments. The Puerto Rico health care system is in no position to absorb reductions of this magnitude without significant adverse impacts on provider quality, availability of services, and the availability of a skilled professional workforce.

II. NEED REMAINS TO END THE DOWNWARD SPIRAL IN MEDICARE PAYMENTS TO FACILITIES IN LOW WAGE AREAS

a. CMS Can and Should Use Its Authority to Develop an Alternative form of Adjustment for Low Wage Index Hospitals That Can Be Upheld in Courts

We ask that CMS continue its demonstrated commitment to the welfare of Medicare beneficiaries in Puerto Rico through work to mitigate the effects of the IPPS wage index. A key element leading to the Court of Appeals decision was the Low Wage Index Hospital Policy's negative adjustment to other facilities nationwide to offset the policy. We believe that SSA § 1886(d)(3)(E) and § 1886(d)(5)(I)(i) contain sufficient authority for an alternative form of low wage index relief that will be accepted by federal courts.

b. The "Downward Spiral" Effect on Low Wages Has Been Demonstrated

In proposing the original Low Wage Index Hospital Policy, CMS acknowledged that the underlying Medicare wage index system has increased the gap between the wage indexes of the high and low wage States to a much larger degree than what the wage index was initially designed to address, the difference in labor markets across the country for comparable services. CMS was right to refer this "situation as the 'downward spiral'."[3]

In this contradictory cycle, the wage index used to negatively adjust Medicare payments to hospitals is influenced by the lower Medicare payments themselves. Multiple external sources have confirmed this conclusion.

In several reports to Congress, the Medicare Payment Advisory Commission (MedPAC) documented the wage index's "problem" of the downward spiral effect. It was articulated as a phenomenon in which hospitals that successfully moderate increases in hourly wages relative to

[2] We further support CMS continuing in future years to fund the 5% cap on wage index decreases with new money. Otherwise, the budget neutrality adjustment will mitigate the benefit of the transition policy for impacted hospitals.

[3] *See* 84 FR 19394 (May 3, 2019).

the national average increase will see a decrease in their wage index. "They will then receive lower payments, which may create pressure to exert even tighter control over costs . . . If hospitals succeed at keeping wage increases below the national average again, their wage index could decrease still further."[4] As such, MedPAC recommended Congress implement an entirely new wage index system.

In its report, *Significant Vulnerabilities Exist in the Hospital Wage Index System for Medicare Payments*, the HHS Office of the Inspector General (OIG) noted "continuing and significant vulnerabilities"[5] and recommended comprehensive reform the hospital wage index system, including the option of a commuting-based wage index. In particular, OIG noted that existing policies under the wage index "create a benefit for a minority of States that is then funded by a majority of States, including States that are overwhelmingly rural in character."[6]

In April 2012, the Secretary of HHS commissioned the Institute of Medicine (IOM) to evaluate CMS' implementation of the wage index. In the report, IOM's Committee on Geographic Adjustment Factors in Medicare Payment proposed a set of recommendations for modifying the hospital wage index in both the method used in its construction and the data used in its calculation. The IOM noted the adverse effects the current wage index has on provider payment accuracy, transparency, timeliness and administrative burden. The IOM called for a model using hourly wage data from the BLS Occupational Employment Survey rather than from hospital cost reports. The IOM also recommended measuring hourly wages using data for all health care workers, rather than only hospital workers, and using a fuller set of occupations incorporated in the hospital wage index occupational mix adjustment.

Considering rising non-labor costs and Medicare reimbursements in Puerto Rico that lag far behind the 50 States and the District of Columbia, hospitals in Puerto Rico have historically had no choice but to keep wages low and watch the most qualified health care professionals move to higher wage areas in the 50 States. As health professionals and physicians are U.S.-educated and bilingual, the States are a natural escape route from such suppressed wages. It is estimated that almost two physicians leave Puerto Rico for the States every day. Additionally, those who have stayed are older. For example, 47.3% of physicians in Puerto Rico are over 60 years old compared to 32.9% in the U.S. The situation certainly makes it impossible for hospitals to play a role in Puerto Rico wage growth alone.

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We propose a partnership between CMS and the Puerto Rico Health Care Community to appropriately address this issue in a timely manner, so American Medicare beneficiaries in Puerto Rico are not burdened further with the impact of the court decision. The Puerto Rico Health Care

[4] MedPAC, Report to the Congress: Promoting Greater Efficiency in Medicare, pg. 130 (June 2007).
[5] HHS OIG, Significant Vulnerabilities Exist in the Hospital Wage Index System for Medicare Payments (A-01-17-00500) (Nov. 21, 2008).
[6] *Id*.

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Community is united in support of Medicare payment levels that are adequate to prevent Puerto Rico from being relegated to a second-class health care system.

Thank you for your consideration and we look forward to continued partnership for the U.S. Citizens of Puerto Rico.

Sincerely,

Medicaid and Medicare Advantage Products Association of Puerto Rico (MMAPA)

Puerto Rico Board of Pharmacists

IPAs Association of Puerto Rico

Alliance of Community Health Centers 330

Salud Integral de la Montana, Inc.

Entrepreneurs for Puerto Rico

Association of Insurance Companies of Puerto Rico (ACODESE)

Puerto Rico Hospital Association

Puerto Rico Medical Association

Puerto Rico Community Pharmacies Association

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Board of Health Services Administrators (CASS)

Puerto Rico Chamber of Commerce

Puerto Rico Manufacturers Association

Puerto Rico Retail Trade Association (ACDET)

NeoMed Salud Primaria

Alianza Pro-Desarrollo Energético de PR

Chamber of Marketing, Industry and Food Distribution

cc: Chiquita Brooks-LaSure, Administrator
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