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NORTHERN MARIANA ISLANDS

COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON EARLY CHILDHOOD, ELEMENTARY AND SECONDARY EDUCATION
SUBCOMMITTEE ON HIGHER EDUCATION AND WORKFORCE DEVELOPMENT

NATURAL RESOURCES COMMITTEE
SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS
SUBCOMMITTEE ON FEDERAL LANDS

Congress of the United States
House of Representatives
Washington, DC 20515

August 26, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard,
Baltimore, MD 21244-1850

RE: CMS-1805-P: Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals with Acute Kidney Injury, Conditions for Coverage for End-Stage Renal Disease Facilities, End-Stage Renal Disease Quality Incentive Program, and End-Stage Renal Disease Treatment Choices Model

Dear Administrator Brooks-LaSure:

We write to share feedback regarding the proposed rule entitled, "Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals with Acute Kidney Injury, Conditions for Coverage for End-Stage Renal Disease Facilities, End-Stage Renal Disease Quality Incentive Program, and End-Stage Renal Disease Treatment Choices Model," referred to herein as the "Proposed Rule." While we support the intended outcomes of the rule, it is critical that the rule achieves its goals without neglecting the remote geographic location and resulting unique economic situation of ESRD facilities located in our districts: the Northern Mariana Islands, Guam, and American Samoa. Given the unique challenges faced by our healthcare providers, we ask that CMS tailors its payment adjustment methodologies to better target payments to ESRD facilities necessary to protect access to care in remote locations such as the U.S. Pacific territories.

I. Wage Index Methodology

As your Agency acknowledged in its Proposed Rule, CMS is committed to achieving "equity in healthcare for beneficiaries by making improvements to its ability to assess whether, and to what extent, [CMS'] programs and policies perpetuate or exacerbate systemic barriers to opportunities and benefits for underserved communities."[1] Yet the proposed new wage index methodology would result in a notable decrease in payments to the Pacific territories, leaving some of America's most vulnerable communities at risk of losing access to dialysis services.

[1] Proposed Rule, 89 Fed. Reg. 55,761 (proposed July 5, 2024).

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Rather than achieving your Agency's stated goals, the one-size-fits-all proposed methodology would do the opposite: disregard adverse impacts to marginalized communities in favor of simplicity. An analysis comparing an alternative methodology (a state-level occupational mix wage index) to the proposed methodology (a national occupational mix wage index) found some notable differences.[2] In particular, the analysis found that the alternative methodology would have resulted in higher wage index values in the Pacific census region, and subsequently, a higher payment to account for resource use. Despite this finding, CMS noted that "many regions experienced little change" and chose to forgo the state-level occupational mix wage index because it is "significantly more complicated and difficult to understand."[3]

We ask that CMS do its due diligence to establish an alternative wage index methodology that would more closely reflect the wages paid by ESRD facilities located in the Pacific territories.

II. Low-Volume Payment Adjustment (LVPA)

Any update to the ESRD PPS, including the LVPA, must align resource use with payment – a principle espoused in CMS' Proposed Rule.[4] Regrettably, the Proposed Rule paints rural and isolated communities in broad strokes, failing to account for higher costs that ESRD facilities located in the Pacific territories face.

In its analysis examining the effects of the proposed wage index methodology on ESRD facilities, CMS acknowledged the necessity to conduct an analysis of the Pacific territories separate from the general Pacific census region.[5] Despite this acknowledgement, CMS opted out of a separate analysis of the Pacific territories for its proposed changes to the LVPA and instead concluded that, in general, low-volume facilities that are rural, isolated, or located in low-demand areas did not have higher costs than low-volume ESRD facilities overall.

This broad generalization neglects to consider the costs inherent to operating healthcare facilities in small island economies. Located deep in the West Pacific, the Marianas and Guam are nearly 4,000 miles from Hawaii and 6,000 miles from California. American Samoa is located 2,500 miles from Hawaii and nearly 5,000 miles from California. Shipping medical supplies and equipment involves air freight expenses, which are significantly higher than ground transportation. Operational costs for utilities, such as electricity and water, are also typically higher on islands. Furthermore, recruiting and retaining qualified healthcare professionals can be difficult. The limited availability of local staff may require facilities to offer higher salaries and incentives to attract staff from the mainland or other regions. ESRD facilities located in the Pacific territories also do not benefit from the same economies of scale as larger mainland facilities, leading to a higher per-unit cost for services and supplies.

The Proposed Rule stated that, under section 1881(b)(14)(D)(iii) of the Social Security Act, CMS is barred from accounting for geographic isolation outside of the extent to which low-

[2] Proposed Rule, 89 Fed. Reg. 55,775 (proposed July 5, 2024).
[3] Ibid.
[4] Proposed Rule, 89 Fed. Reg. 55,800 (proposed July 5, 2024).
[5] Proposed Rule, 89 Fed. Reg. 55,780 (proposed July 5, 2024).

volume facilities face higher costs in furnishing renal dialysis services than other facilities.[6] However, CMS had arrived at this conclusion without proper consideration of the unique economic situation of the Pacific territories. We share concerns previously raised by MedPAC in its June 2020 Report to Congress and ask that CMS make refinements to the LVPA adjuster to better target ESRD facilities that are critical to beneficiary access to dialysis care in remote or isolated areas such as our islands.[7]

Should CMS be unable to carry out this refinement due to statutory constraints, we ask that the Secretary consider exercising the authority provided under section 1881(b)(14)(D)(iv) of the Social Security Act to establish other payment adjustments for the Pacific territories. Such adjustments would account for the higher cost of providing care in some of the most remote locations in our country and uphold CMS' commitment to achieving equity in healthcare outcomes for our beneficiaries using the definition of equity set forth in Executive Order 13985.[8]

III. Conclusion

CMS has previously recognized the necessity of tailored policy for the territories. During the implementation of the Affordable Care Act, CMS worked closely with our islands to understand the potential impacts of the law on our constituents. Following such discussion, the Secretary reversed the Agency's interpretation of the relevant statutory language in the Public Health Service Act to ensure that the new market reforms did not undermine the stability of the territories' health insurance market.[9]

Congress, too, has acknowledged the shortcomings of blanket policies that do not capture the challenges faced by the territories. Hospitals located in the Marianas, Guam, American Samoa, and the U.S. Virgin Islands are statutorily exempt from the inpatient PPS, a system that – like the ESRD PPS – relies on a national baseline to determine payments. And Medicaid programs in the Marianas and American Samoa are granted special waiver authority under Section 1902(j) of the Social Security Act.

We must not fail in our endeavor to uphold principles of justice and health equity for Americans in every corner of our nation – the consequences for the people we represent are too dire. We respectfully ask CMS to consider establishing alternative payment methodologies for the Pacific territories to preserve lifesaving access to dialysis.

Thank you for your full and fair consideration of this matter.

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[6] Proposed Rule, 89 Fed. 55,799 (proposed July 5, 2024).
[7] jun20_ch7_reporttocongress_sec.pdf (medpac.gov)
[8] https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/
[9] https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:e20a8c1d-c60b-4b1f-b8b3-f78bbc6f0234

Sincerely,

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