National Rural Health Association

Date: June 21, 2023

To: Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President

From: National Rural Health Association

Subject: Hospital Outpatient Prospective Payment System: Remedy for 340B-Acquired Drugs Purchased in Cost Years 2018-2022 (CMS-1793)

Background:

Under the Medicare Hospital Outpatient Prospective Payment System (OPPS), the Centers for Medicare and Medicaid Services (CMS) implemented a -22.5% payment reduction for certain outpatient drugs for some hospitals in the 340B Drug Pricing program from calendar years 2018 to 2022. This policy was budget neutral, as a result all hospitals (340B and non-340B) saw an increase in reimbursement for non-drug services during this time.

In 2022, the Supreme Court found this policy to be unlawful and now the Department of Health and Human Services (HHS) and CMS must make affected hospitals whole. As the Administration puts forth a remedy, the National Rural Health Association (NRHA) stresses that any policy that involves recoupment of funds from all hospitals, particularly rural hospitals, would be devastating for rural America.

NRHA is a non-profit membership organization with more than 21,000 members nationwide that provides leadership on rural health issues. Our membership includes nearly every component of rural America's health care, including rural community hospitals, critical access hospitals, long-term care providers, doctors, nurses, and patients. We work to improve rural America's health needs through government advocacy, communications, education, and research.

Issue:

NRHA urges the Administration to ensure that any remedy is done in a fair manner, with minimal impact on already vulnerable rural facilities. Analysis by the Federation of American Hospitals shows that 89% of rural OPPS hospitals would lose funding in a recoupment scenario. An ideal solution would be for CMS to establish a remedy that repays 340b participating hospitals the money they are owed, without recouping money from any hospitals.

If the Administration moves forward with a remedy that involves recoupment from all OPPS hospitals to make hospitals subject to the payment cut whole, NRHA believes that it would have an unfair and disproportionate impact on rural hospitals. First, non-affected rural hospitals received increased reimbursement while the policy was in place. CMS implemented a policy deemed unlawful by the courts; thus, unaffected hospitals should not be penalized by a remedy through rescinding already distributed funds. As a policy matter, this would set a bad precedent of recollecting money that hospitals likely have already spent because of poor agency policy.

Second, rural hospitals cannot sustain further Medicare payment cuts. Since 2010, 152 rural hospitals have closed, 11 of which have closed in 2023 alone.[1] 2020 saw the highest number of rural hospitals since 2010 with 18 hospital closures, a number that will likely be surpassed in 2023 given current

[1] Rural Hospital Closures, N.C. Rural Health Research Center, Cecil G. Sheps Center for Health Services Research, University of North Carolina at Chapel Hill https://www.shepscenter.unc.edu/programsprojects/rural-health/rural-hospital-closures/.

trends.[2] In addition, nearly 45% of rural hospitals are operating in the red and the overall median rural hospital operating margin is 1.8%.[3] Any cuts on top of existing Medicare sequestration rates of -2%, significant workforce shortages and labor costs, and ongoing inflationary cost pressures would be detrimental to our rural hospitals. In addition, Medicare is the predominate payer for most rural hospitals, meaning payment reductions in the program have a disproportionate impact on rural providers.

Vulnerable rural hospitals in particular are susceptible to closure if they are made to pay back the amount that they received in increased reimbursement. Increased reimbursement rates were distributed during the COVID-19 pandemic when rural hospitals needed all additional resources available to stay afloat and continue providing care to rural patients during a challenging time. Most, if not all, rural hospitals likely spent any funds that they received while the policy was in place.

At the community level, hospital closures mean less access for rural beneficiaries that already have to travel more than twice the distance compared to urban patients to receive care.[4] The rural beneficiary population also tends to be lower income, older, and have worse health outcomes.[5] When rural hospitals close, it is vulnerable, underserved populations who suffer most. As an intermediate step, hospitals may also cut service lines that have significant negative margins in rural areas, such as obstetrics or chemotherapy. These services, which are critical to the patients that need them, would be less accessible. The outcome of this potential policy will ultimately be an access issue.

NRHA points to the April 6, 2023, Executive Order titled, "Modernizing Regulatory Review."[6] This Executive Order states that regulatory analysis of administrative actions should recognize the distributive impacts of the action as well as equity considerations.[7] Geography is an equity consideration, especially when coupled with the disparities frequently co-occurring in underserved rural communities. The distributive impact of payment cuts to rural hospitals will be felt by all community members where a hospital closes. Hospital closures are felt deeply in rural communities as they lose a point of access to care and as a major economic driver and employer shuts down.

Recommended Action:

NRHA asks that the Administration consider the perspective of rural communities, which have been historically underserved, when implementing a remedy. Recoupment from all OPPS hospitals is an inappropriate remedy that will disproportionately impact rural hospitals and access to care for rural communities. The Administration must seek to repay affected hospitals without rescinding funds from rural hospitals.

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[2] *Rural Hospital Closures*, N.C. Rural Health Research Center, Cecil G. Sheps Center for Health Services Research, University of North Carolina at Chapel Hill. Retrieved June 21, 2023. https://www.shepscenter.unc.edu/programsprojects/rural-health/rural-hospital-closures/.

[3] Michael Topchik, et al., *Rural Health Safety Net Under Renewed Pressure as Pandemic Fades*, The Chartis Group, February 2023, https://www.chartis.com/sites/default/files/documents/chartis_study_rural_health_safety_net_under_renewed_pressure_as_pandemic_fades.pdf.

[4] Marvellous Akinlotan, et al., *Rural-Urban Variations in Travel Burdens for Care: Findings from the 2017 National Household Travel Survey*, Southwest Rural Health Research Center, July 2021, https://srhrc.tamu.edu/publications/travel-burdens-07.2021.pdf.

[5] *Access Health Care in Rural America,* US Government Accountability Office Health Care Capsule, May 2023. https://www.gao.gov/blog/why-health-care-harder-access-rural-america

[6] Exec. Order No. 14,094, 88 Fed. Reg. 21, 879 (Apr. 6, 2023).

[7] *Id.*