



February 20, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

SUBJECT: CMS-1702 and IFC, Medicare Shared Savings Program: Extreme and Uncontrollable Circumstances Policies for Performance Year 2017.

Dear Administrator Verma:

The Federation of American Hospitals (FAH) appreciates the opportunity to comment to the Centers for Medicare & Medicaid Services (CMS) on the above interim final rule with comment period, published in the Federal Register on December 26, 2017 (42 CFR Part 425). The FAH is the national representative of more than 1,000 investor-owned or managed community hospitals and health systems throughout the United States. Our members are diverse, including teaching and non-teaching, short-stay, rehabilitation, long-term acute care, psychiatric, and cancer hospitals in urban and rural America, and they provide a wide range of acute, post-acute and ambulatory services.

The interim final rule establishes an extreme and uncontrollable circumstances policy for assessing the financial and quality performance of Accountable Care Organizations (ACOs) in the Medicare Shared Savings Program affected by extreme and uncontrollable events. Under the proposal, this policy would be applied to ACOs located in an emergency area.

The FAH appreciates CMS recognizing the need for an Extreme and Uncontrollable Circumstance policy and the relief it provides to ACO's affected by this year's disasters including the devastating hurricanes. In particular, the FAH supports the need identified by CMS to modify the payment methodology for ACOs participating in Tracks 2 and 3. We believe the policy could be improved if CMS would incorporate a process for further mitigating shared losses for ACOs participating in a performance-based risk track beyond the mitigation proposed in the interim final rule. Specifically, we believe that losses should be waived, or a modifier used to adjust, for ACOs suffering losses beyond those recognized in the proposed methodology. Although hospitals devote significant effort to preparing for threats from extreme and uncontrollable circumstances it is difficult to predict with

confidence the ability and speed by which an ACO is able to recover the capacity to serve patients and the data management requirements to successfully operate the ACO in both impacted and unimpacted areas. This may be especially true to the extent the ACO's legal entity is in a disaster area thus impacting the ACO's ability to serve patients in affected and unaffected areas. These circumstances have a significant impact on the resiliency of a particular ACO to recover from the devastation. ACOs with operating and legal centers contending with infrastructure damages, managing personnel shortages as well as dealing with the short- and long- term effects suffered by health care workers as a result of the extreme and uncontrollable event should be granted full dispensation of the downside risk at least during the percentage of total months in the performance year affected by the extreme and uncontrollable circumstance.

In addition, the FAH is concerned over the loss of investment experienced by all ACOs, regardless of their participating Track. Participating in a Shared Savings Program requires significant up-front investment which may or may not be later recovered through shared savings. ACOs experiencing damage to their infrastructure will face challenges not only re-establishing care delivery post recovery but also recouping their investment. We recommend further adjustment in the calculation of shared savings for all tracks to take into account ACO-related investments.

The FAH appreciates the opportunity to comment on the interim final rule with comment period. We look forward to continued partnership with the CMS as we strive for a continuously improving health care system. If you have any questions regarding our comments, please do not hesitate to contact me or a member of my staff at (202) 624-1500.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew M. Kohn". The signature is fluid and cursive, with a large initial "A" and "M".