Texas Hospital Association

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July 24, 2023

COMMENT LETTER

Via Email to pfd_hospitals@hhsc.state.tx.us
HHSC Provider Finance Department
P.O. Box 149030
Austin Texas 78714-9030

Re: Comments on Proposed Rule 23R026 (concerning OPPS 3M™ Enhanced Ambulatory Patient Groups (EAPG) implementation)

Dear Sir/Madam:

On behalf of our more than 450 member hospitals and health systems, including rural, urban, children's, teaching and specialty hospitals, the Texas Hospital Association (THA) is pleased to submit these comments regarding the above-referenced proposed rules. We have seen the comments submitted by our counterparts at the Children's Hospital Association of Texas and Teaching Hospitals of Texas and agree with and support those comments on behalf of the broader THA membership. It is vitally important to Texas hospitals that the long-awaited implementation of the Medicaid outpatient prospective payment system be carried out in a way that is transparent, predictable, and minimally disruptive, and that minimizes the financial impact to hospitals, many of which are chronically in a financially precarious position. To that end, we have the following comments related to the OPPS implementation as contemplated by the proposed amendments.

Transparency and Stakeholder Engagement

As a general comment, in recognition of the massive change in process and reimbursement methodology this initiative represents, and in keeping with HHSC's long-standing tradition and history, we believe it is critical that HHSC establish a concrete method of receiving feedback on issues that hospitals and other providers are experiencing with the OPPS implementation. This would include an established point of contact at HHSC to receive information from providers and regular meetings with 3M and other affected stakeholders.

Additionally, prior to the implementation of the OPPS, HHSC would convene a stakeholder forum and require that 3M provide a detailed overview of its system and specify what avenues are available to providers to raise with 3M any issues or concerns identified with its EAPG product. Most importantly, 3M should provide cost estimates related to purchasing software or other technical updates required for implementation to both the state and providers. HHSC should also explore any and all available alternatives to ensure the most cost-effective product is available to both the state and providers. HHSC should also employ mechanisms to hold 3M accountable for being responsive to providers answers to their questions about and address issues providers encounter with the proprietary software. Ideally this accountability would be contained in the regulations, or minimally as a contract term and a requirement of 3M's contract compliance.

Uncertainty Regarding Impact on Payment

In the BACKGROUND AND PURPOSE section, HHSC indicates that it is "working through the evaluation of the potential impacts in payments to hospitals and other impacted providers and expects to share those impacts in May as the evaluation is completed." We question whether it is sound policy to propose rules and enact such a drastic change in reimbursement methodology prior to evaluating the impacts of the changes on hospitals and other providers, and thus ultimately patients, and urge HHSC to complete the evaluation and consider the impact before the system is implemented.

Without knowing the impact, we are extremely concerned that the implementation will result in lower payments to hospitals without any ability to prepare for that possibility. This outcome would be devastating for financially strapped hospitals reeling from high labor and supply costs and declining reimbursement across a variety of payors. Given this uncertainty, we would urge HHSC to consider, as part of the implementation, strategies to mitigate any unexpected negative financial impact. As discussed in more detail by others' comments, this could include setting a reimbursement floor to minimize payment disruption to hospitals during the transition with a hospital-specific true-up or stop loss mechanism if the new OPPS base rate results in a loss of payments to the hospital.

Inadequate Consideration of Costs to Providers and Communities

We note that the "PUBLIC BENEFIT AND COSTS" section indicates that "for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose any additional fees or costs on those who are required to comply." This statement, however, does not reflect the reality that the selection of the proprietary 3M EAPG solution will introduce considerable direct cost to Texas hospitals. We believe a more thorough cost analysis would need to include the costs that will be incurred by providers to purchase product from the state-selected vendor.

Additionally, the "SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS" indicates that "there will be no adverse economic effect on small businesses, micro-businesses, or rural communities", and that the rules "do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules." While we understand that it may be difficult to calculate, there is certainly the potential that the implementation of that OPPS without any insight into the how EAPG will actually work due to its proprietary nature, and the general uncertainty of implanting this drastic change in payment methodology and reimbursement, will have an impact on small businesses and rural communities, particularly if it impacts access to care in these communities. We believe the publication of the final rule should acknowledge these possibilities even if they cannot be readily quantified.

Implementation Timeline

The proposed amendment at §355.8061(a)(1) indicates that "for services provided on and after the date that the modernized Medicaid Management Information System (MMIS) becomes operational, HHSC, or its designee, will reimburse all hospital providers based on an outpatient prospective payment system (OPPS)." This contemplates an indefinite and immediate implementation date that could be extremely disruptive to hospitals

that may be required to convert to this new system with minimal notice. Given that the changeover to the OPPS constitutes a massive change to the industry, we request that the final rule specify a more definitive implementation timeline, for example 18 months after HHSC gives notice to providers via the Texas Register that the MMIS has become operational. This will allow hospitals and other providers time for acquiring the product, including budgeting for acquisition, testing and "working out the bugs."

We also request that HHSC create and publish a comprehensive OPPS implementation timeline that includes ample opportunity for stakeholder engagement with HHSC and with 3M, as referenced above, and evaluation of MCO implementation readiness.

Carve-outs/Exclusions

With respect to the list of exceptions to the OPPS in §355.8061(a)(2), while the list is appropriate, we believe it would be prudent for the Executive Commissioner to be able to potentially add additional services, and would recommend adding a new subsection (G) to read substantially as follows:

> (G) Any other item or service designated by the Executive Commissioner upon 90 days' notice to providers.

Additionally, the reimbursement methodology for these excluded items should be specified.

We appreciate your consideration of these comments. Should you have any questions or need additional information, please do not hesitate to contact me at 512/465-1577 or swohleb@tha.org.

Respectfully submitted,

Stephen G. Wohleb
Senior Vice President and General Counsel
Texas Hospital Association