



600 13TH ST., NW, SUITE 500
WASHINGTON, DC 20005
p | 202-753-5500
f | 202-347-5147

16011 COLLEGE BLVD., SUITE 250
LENEXA, KS 66219
p | 913-262-1436
f | 913-262-1575

WWW.CHILDRENSHOSPITALS.ORG

January 27, 2020

Aaron T. Siegel
Federal Register Liaison Office
Office of the Chief Management Officer
Directorate for Oversight and Compliance
Department of Defense
4800 Mark Center Drive
Mailbox #24
Suite 08D09
Alexandria, VA 22350-1700

RE: Docket Id: DOD-2019-HA-0056. RIN 0720-AB73. TRICARE; Reimbursement of Ambulatory Surgery Centers and Outpatient Services Provided in Cancer and Children's Hospitals

Dear Mr. Siegel:

The Children's Hospital Association (CHA) appreciates this opportunity to respond to the proposed rule, **TRICARE; Reimbursement of Ambulatory Surgery Centers and Outpatient Services Provided in Cancer and Children's Hospitals**, on behalf of the nation's children's hospitals that partner with TRICARE and its managed care contractors to care for the more than 2 million children of the country's military families. As you know, children's hospitals serve as indispensable regional providers of pediatric specialty care and are in most TRICARE networks to treat many of the world's, and TRICARE's, most complex pediatric cases. In addition, many children's hospitals team with military medical education training programs to provide rotations and training for hundreds of uniformed military physicians in pediatric and pediatric specialty care.

Though TRICARE represents a small percentage of their case and payor mix overall, it is disproportionately significant for some children's hospitals. We are committed to working in partnership with the program to ensure that children in military families have access to appropriate, timely and high-quality specialized pediatric services. We appreciate the ongoing partnership with the Department of Defense (DoD) and the Defense Health Agency (DHA) on issues that affect military families and children's hospitals' participation in the military health system, such as policies to specifically address children's health needs and pediatric care settings.

We strongly support the rule's intent of addressing the uniqueness of the care provided by children's hospitals and reducing administrative complexities related to reimbursement under TRICARE. Though the rule proposes a payment methodology intended to address the complexity of children's hospital care and the current reimbursement methodology, we believe more specificity is needed to avoid possibly serious, albeit unintentional, financial losses. As you know, children's hospitals' experience with the Medicare payment system is limited to their care for children with End-Stage Renal Disease who account for, on average, less than 1% of their payor mix. Furthermore, children's hospitals' commercial contracts do not rely on the Medicare payment methodologies, given Medicare's adult focus. Consequently, absent additional information and sufficient time for technological and administrative adaptations, it is not possible for children's hospital finance experts to accurately determine the specific impact of

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these changes and possible losses, assess whether the rule's assumptions regarding the hold harmless guarantee are appropriate and valid, or provide meaningful comments on the specifics of the rule.

Therefore, we ask DoD to:

- Extend the comment and implementation timelines
- Clarify its data sources and analyses related to the financial impact of the rule on children's hospitals

The following comments address the need for additional time and information given the technical and operational challenges that children's hospital financial teams face in analyzing, responding to, and implementing the proposed changes.

- **An extension of comment period and implementation roll out is needed.**

We respectfully request that DoD lengthen the comment period beyond the current 60 days and incorporate an extended implementation period into the final rule given the significance of the proposed structural shift in the payment mechanism for children's hospitals. Children's hospitals need sufficient time in order to conduct meaningful analyses and provide feedback to DoD on the proposed changes in the rule, much less implement those changes.

Most children's hospitals do not have software and systems set up, or their staff trained, to conduct computations under the Medicare Outpatient Prospective Payment System (OPPS) given their extremely limited Medicare or commercial business that utilize OPPS for pediatrics. Therefore, time will be needed to allow them to switch their systems to the new methodology at a time when they are also, in some cases, correcting payment inaccuracies and processing that occurred with the managed care contract shift of January 2018. Both the hospitals and TRICARE contractors are currently devoting significant hours to analyses of where and how claims from the past two years should be corrected and reprocessed. For example, most outpatient claims for one hospital were paid incorrectly from January 2018 through October 2019. This has required major time and effort to both make the corrections and to wait for these claims to be reprocessed.

Not only are we concerned about the capacity of children's hospitals to substantively comment on the methodology changes in the proposed rule, we are also concerned about the implications of these payment processing challenges on the impact analysis in the proposed rule. If the analysis was based on the underpayments that were widespread during 2018 and 2019, it is possible that the actual impact will be much greater than DoD has estimated.

- **More information is needed to allow accurate modeling and analyses of financial implications for children's hospitals.**

Children's hospitals seek additional information regarding the underlying assumptions and data sources that will be used under the new system and were used in the rule's impact analysis. Absent this information, affected children's hospitals have not been able to conduct in-depth or exact modeling to determine the financial impact on their institutions. However, initial estimates by some hospitals indicate that the fiscal impact could be much more significant than articulated in the regulatory analysis of the proposed rule.

To inform children's hospitals' impact modelling and response to the proposed changes in this rule and to assist them with future implementation of the final rule, we respectfully seek clarification and more information in the

following areas. We ask that DoD provide responses to these questions and supporting information via targeted technical assistance sessions for TRICARE children's hospitals, as well as through the rulemaking process.

- Proposed reimbursement methodology
 - Can DoD provide a clear point-by-point comparison of the current and proposed reimbursement methodology?
 - Will the newly proposed ambulatory surgery center (ASC) methodology affect children's hospitals at all?
 - What is the payment-to-cost ratio that is referenced in the rule and is currently in use, how is it determined, and what is the data source for that ratio?
 - What data source will DoD use to determine the specific hospital cost to charge ratio (CCR)? If the Medicare cost report is the source of the data for a hospital CCR, how is DoD addressing the uniqueness of pediatric care given that the Medicare cost report does not accurately reflect or capture all children's hospitals' costs and services?
 - How does DoD intend to ensure that the unique costs of pediatric specialty care—which may not be reflected in Medicare “allowable” costs—are captured in the calculations of the cost-to-charge ratio (CCR) and the hold-harmless reconciliation payments?
 - Will **all** outpatient services (e.g., emergency department, surgical, outpatient clinics), be subject to OPSS/cost reconciliation?
 - Will high-cost drugs, implantables and other related pediatric therapeutics be included in the OPSS/cost reconciliation process, and if so, how will the hold-harmless reconciliation accommodate the fact that Medicare OPSS does not fully address these costs?
 - How is DoD planning to assure timely reconciliation payments under the change from a monthly to an annual timeframe? Would DoD consider modifying the payment timeline to provide quarterly rather than annual reconciliation payments?

- Impact analysis
 - What data did DoD use to conduct its impact analysis in the proposed rule?
 - Can DoD provide the specific impacts of the new payment methodology for both children's hospitals and cancer hospitals?
 - Can DoD provide an impact analysis for each outpatient service category (e.g., emergency department, surgical, outpatient clinics) that will be subject to the new methodology? Can DoD do the same for high-cost drugs, implantables and other related pediatric therapeutics if they are also subject to the new methodology?
 - Can DoD determine, and provide, for each outpatient service category (e.g., emergency department, surgical, outpatient clinics) subject to the new methodology the differential between the OPSS payment and actual costs as part of the impact analysis? If high-cost drugs, implantables and other related pediatric therapeutics are subject to this new methodology, can DoD also provide the differential between the OPSS payment and actual costs as part of its impact analysis?
 - Is the impact to children's hospitals with respect to the ASC changes (given that children's hospitals are currently paid like ASCs) included in the \$54 million impact described for ASCs?
 - How much of the impact on children's hospitals is attributable to the ASC grouper payments?
 - How will this proposal impact/affect hospital negotiations and pricing with TRICARE managed care plans?

In conclusion, we look forward to working with you to address our questions and concerns and develop a reasonable timeline for a revised payment methodology process that appropriately reflects the costs of care in a

children's hospital. We are very appreciative of DoD's ongoing recognition—as evidenced by the intent of this proposed rule—of the unique nature of the care provided by children's hospitals and thank you for your continued efforts and interest in collaborating with us to ensure that children in military families have timely access to the life-saving and specialized pediatric care that children's hospitals provide. Children's hospitals remain committed to working with you on appropriate payment methodologies and processes in the coming months and to continuing to advance policies that are fiscally sound and enhance children's health.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "M. J. Kaufman". The signature is fluid and cursive, with the first name "M." and last name "Kaufman" clearly distinguishable.

M. James Kaufman, Ph.D.
Vice President, Public Policy