February 1, 2020

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

Re: CMS-2393-P

Dear Administrator Verma:

The Healthcare Leadership Council (HLC) thanks the Centers for Medicare & Medicaid Services (CMS) for the opportunity to submit comments in response to the notice of proposed rulemaking entitled "Medicaid Program; Medicaid Fiscal Accountability Regulation." We have serious concerns that this proposed rule will eliminate access to health coverage for millions of people and, accordingly, urge CMS to reconsider this proposed rule. This proposed rule goes beyond its stated purpose of clarifying policies regarding funding the state share of Medicaid. While the proposed rule focuses on four areas: Medicaid Fee-for-Service Provider Payments; Disproportionate Share Hospital Payments; Medicaid Program Financing; and Health Care-Related Taxes and Provider-Related Donations, HLC would like to comment specifically on the Medicaid Fee-for-Service Provider Payment proposal.

HLC is a coalition of chief executives from all disciplines within American healthcare. It is the exclusive forum for the nation's healthcare leaders to jointly develop policies, plans, and programs to achieve their vision of a 21st century healthcare system that makes affordable high-quality care accessible to all Americans. Members of HLC – hospitals, academic health centers, health plans, pharmaceutical companies, medical device manufacturers, laboratories, biotech firms, health product distributors, post-acute care providers, home care providers, and information technology companies – advocate for measures to increase the quality and efficiency of healthcare through a patient-centered approach.

HLC appreciates CMS's stated goal of strengthening the overall fiscal integrity of the Medicaid program through this proposed rule. However, we have concerns regarding the way CMS proposes to handle Medicaid's supplemental payments. Supplemental payments are unique to Medicaid, serving as a cooperative program between the federal government and states. The federal government provides assistance to states

to provide medical services to Medicaid beneficiaries. As part of this program, states must meet certain requirements, including funding their portion of Medicaid expenditures, which is matched at different rates by the federal government. States are given flexibility to design their own method for paying providers, but most payments can be categorized as base payments for services and supplemental payments, which are typically made in a lump sum and are not tied to a particular service.

If this proposed rule is implemented, it will undermine the stability and flexibility of care delivery. This rule would severely limit states' ability to draw down critical federal Medicaid payments that providers nationwide need to ensure access to essential care for Medicaid beneficiaries and the uninsured. Provider taxes and transfers of public funds are statutorily permitted sources of state financing for Medicaid and are critical funding tools used by states to finance the non-Federal share of their Medicaid program. Medicaid payment rates vary across states and are typically set below the actual costs of providing services to Medicaid beneficiaries. In Texas, for example, hospitals' Medicaid reimbursement only covers about 70 percent of the costs of providing inpatient and outpatient services for Medicaid enrollees, leaving 30 percent unreimbursed. These supplemental payments allow states to minimize this Medicaid shortfall and ensure ongoing access to care. In particular, these payments (e.g., DSH payments, UPL supplement payments) help offset some of the costs of providing unreimbursed care for the uninsured and lower-than-costs Medicaid reimbursement. If this proposed rule is finalized, essential service lines, including already hard-hit labor and delivery services, would likely be put in jeopardy while rural hospitals would close at an even faster rate than now. Most importantly, access to specialized and lifesaving care for many Americans would suffer.

Alternatively, without these existing supplemental Medicaid payments, states would have to draw from alternative sources to continue funding their Medicaid programs at current levels such as increasing taxes. While the full extent of these outcomes is currently unknown, HLC is concerned that the potential significance in both the scope and nature of such consequences warrants further analysis and consideration by CMS before being finalized.

Thank you for the opportunity to provide comments on this proposed rule. HLC looks forward to continuing to engage with the administration as the regulatory process proceeds. If you have any questions or need additional information, please do not hesitate to contact Debbie Witchey at (202) 449-3435 or dwitchey@hlc.org

Sincerely,

Mary R. Grealy
President