Andrew M. Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201

RE: CMS-1656-P, Medicare Program; Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Payment to Certain Off-campus Outpatient Departments of a Provider; Proposed Rule (Vol. 81, No. 135), July 14, 2016.

Dear Mr. Slavitt:

On behalf of our 101 member hospitals and health systems, the Washington State Hospital Association appreciates the opportunity to comment on the provisions contained in the Centers for Medicare & Medicaid Services' (CMS) calendar year (CY) 2017 hospital outpatient prospective payment system (OPPS) proposed rule. The proposed rule would implement the site-neutral provisions of the Bipartisan Budget Act of 2015 (BiBA).

The hospital field and more than half of the U.S. House and Senate this spring urged CMS to provide reasonable flexibility when implementing the BiBA site-neutral provisions in order to ensure that Medicare patients have continued access to the highest quality hospital care in their communities. Instead, CMS has proposed a short-sighted and unworkable set of policies that provide no reimbursement to hospitals for the services they provide to Medicare beneficiaries.

The agency's proposals fail to recognize the crucial role that hospital outpatient departments serve in providing access to primary and specialty care for both Medicare and Medicaid enrollees in many communities. These hospital outpatient departments provide care that would not be available under standard fee schedule payment. We disagree with the general premise that their status is generally abused and needs to be phased out. The experience in our state has been quite the opposite. Hospital outpatient departments have been a financial lifeline to ensure and preserve access to care for our more vulnerable citizens. Access to appropriate care helps reduce avoidable emergency department visits and other costs. We recognize that the overall issue is outside of CMS' purview. That said, we believe CMS' proposed policies go far beyond the Congressional intent and do not take advantage of the flexibility that Congress provided.

CMS must delay these site-neutral policies until it can adopt much-needed changes (outlined below) in order to provide fair and equitable payment to hospitals.

Payment Policy for Non-excepted Hospital Outpatient Departments. We are deeply concerned that CMS proposes to make *no payment* to newer "non-excepted" hospital outpatient departments for the services they provide to Medicare beneficiaries in 2017. We understand that the CMS proposal is based purely on the technical difficulties in doing so. In other words, the agency would not provide any reimbursement to these departments for the nursing, laboratory, imaging, chemotherapy, surgical and many other reasonable and necessary services they provide to Medicare beneficiaries. Such a payment policy is completely unreasonable and unsustainable.

CMS should delay any restriction or reduction in payment for these services until it has a viable way to provide reasonable payment. To outright deny services because they are provided by hospital outpatient departments rather than independent clinics goes beyond the congressional intent. While it may not be simple, CMS clearly has mechanisms at its disposal that it could use to pay hospitals directly for non-excepted services. **The agency has a responsibility to work to be able to provide reasonable payment to hospitals. It cannot implement its site-neutral policies until it addresses this unfairness.**

Relocation and Rebuilding. We are particularly troubled by CMS's unreasonable and inflexible proposal to discontinue current reimbursement under the OPPS for excepted hospital outpatient departments that need to relocate or rebuild. There are many necessary and valid reasons that excepted hospital outpatient departments would need to relocate – doing so should not cause them to lose payment. CMS should allow for relocation and rebuilding of excepted hospital outpatient departments without triggering payment cuts. CMS has policies that allow other types of facilities to relocate and retain their status so long as they meet certain requirements. For example, a Critical Access Hospital can relocate and maintain its status as long as it continues to generally serve the same geographic location and patients.

The agency's proposal to limit flexibility in relocation and expansion, in combination with its proposal to withhold hospital payments altogether, would mean that hospitals and health systems that have planned to provide or expand much-needed hospital-level outpatient care and services in urban and rural communities with limited access to care would not be able to do so.

Additional Considerations for 2018. As CMS considers how to establish a more reasonable and workable payment policy for 2018, we urge the agency to further examine its other proposals related to site-neutrality, as outlined below. We are concerned that, as written, the rule would freeze the progress of off-campus clinical care in its tracks. We fear that CMS's rigid proposals would negatively impact access to care for beneficiaries, particularly much-needed services for vulnerable populations in the nation's most underserved communities.

Since Medicaid programs often mirror Medicare's in regard to hospital outpatient department payment, the proposed changes could ultimately undermine the financial sustainability of access for Medicaid, as well as Medicare patients. In Washington State, many hospital outpatient departments were created either to preserve access to physician practices that were failing under Medicare and Medicaid fee schedule due to payer mix, or were created out of a need to provide access for Medicare and Medicaid patients for needed services that would not be financially sustainable in the community other than as a hospital service. Hospital outpatient departments that serve high proportions of Medicare and Medicaid enrollees receive far less than the cost of providing care. We can provide numerous examples of this in our state and recommend CMS carefully consider the impact on access of not allowing the flexibility that Congress provided in the law.

Expansion of Services. CMS proposes that, if an excepted hospital outpatient department expands the types of services it provides on or after Nov. 2, 2015, those services be paid at the site-neutral rate. This is extremely problematic. Off-campus departments must be able to expand the items and services that they offer in order to meet changes in clinical practice and the changing needs of their communities without losing their ability to be reimbursed under the OPPS. This is particularly important as a declining amount of services for Medicare and

Medicaid enrollees are available from non-hospital providers, and is particularly an issue for patients with aa greater level of acuity such as those with chronic conditions or in need of would care. Nothing in BiBA requires that CMS treat expanded services in an excepted hospital outpatient department in this way. In fact, the plain language does not address expansion at all. CMS must ensure that patients continue to have access to the services they need at the facilities where they seek treatment. We strongly urge CMS to protect hospital's ability to offer an expanded range of services to meet the needs of patients in their community without experiencing a loss of reimbursement.

Change of Ownership. We are concerned that CMS's proposal would not permit an excepted off-campus hospital outpatient department to retain its excepted status if it is individually acquired by another hospital. Even under current payment, hospital outpatient departments receive less than the cost of providing the care and require significant hospital subsidy to operate. Often, hospitals in financial difficulty that plan to close their inpatient hospital beds will offer to transfer their outpatient departments to better-performing hospitals in order to ensure that critical outpatient services are still accessible to patients in the community. Such acquisitions, and the ability to preserve physician capacity and services would not be financially feasible if the departments were to lose its payment. We urge CMS to allow individual hospital outpatient departments to be transferred from one hospital to another and maintain their excepted status.

In conclusion, WSHA urges CMS to delay the implementation of the site-neutral policies in the proposed rule by at least one year. This delay would provide the time necessary for CMS to develop a fair and flexible payment policy under which hospitals would be able to receive direct payment for their non-excepted hospital outpatient departments and for non-excepted items and services that they furnish in excepted hospital outpatient departments.

Sincerely,

Claudia Sanders

Senior Vice President

Andrew Busz

Director, Financial Policy