Illinois Health and Hospital Association

July 23, 2020

Steffanie Garrett
General Counsel
Illinois Department of Healthcare and Family Services
201 South Grand Avenue East, 3rd Floor
Springfield, IL 62763-0002

RE: HFS Hospital Long Term Care Services Proposed Rule (44 Ill. Reg. 10065)

Dear Ms. Garrett:

On behalf of its more than 200 member hospitals and nearly 40 health systems, the Illinois Health and Hospital Association (IHA) appreciates the opportunity to comment on the Illinois Department of Healthcare and Family Services' (HFS) proposal to amend 89 Ill. Adm. Code 148.50 to cover Hospital Long Term Care Services, in accordance with Public Act 101-0209. IHA supports reimbursing hospitals for providing continued care when Medicaid patients are ready for discharge but an appropriate post-acute care placement is unavailable.

IHA appreciates HFS' recognition of the ongoing challenges hospitals face in securing the appropriate level of post-acute care for vulnerable Medicaid patients and its support of reimbursement for inpatient stays that extend beyond medical necessity due to these challenges. Nevertheless, IHA is concerned that the proposed rule will add an unnecessary administrative burden to hospitals that appears contrary to Public Act 1010-0209 and, by failing to include the Managed Care Organizations (MCOs) within its ambit, will have the unintended consequence of creating new issues that will lead to greater conflict between hospitals and MCOs. During the drafting process, IHA provided numerous constructive recommendations to HFS to remedy these concerns, many of which are outlined below.

Prior Authorization Requirement

Public Act 101-0209 specifically requires hospitals to notify HFS when a patient covered under the Fee-for-Service (FFS) program is ready for discharge or the appropriate MCO when the patient is admitted, and delineates the relative timing of when such notification is required (305 ILCS 5/14-13(e)). The proposed rule goes beyond the statutory language with a requirement that hospitals obtain prior authorization.

The statute neither requires nor authorizes prior authorization. A hospital requesting and receiving affirmative authorization from either HFS or an MCO is an

administratively burdensome process qualitatively different from a hospital providing notice to either HFS or an MCO, as required by statute. IHA believes that HFS would exceed its statutory authority by adding a prior authorization requirement to the statutory notice requirements. **IHA requests that HFS remove the references to prior authorization proposed in subsections (c)(1) and (c)(2)(C).**

Nursing Facility Level of Care Requirement

Public Act 101-0209 specifically mandates reimbursement to hospitals for inpatient stays extended beyond medical necessity when there is an inability to find "an appropriate placement after discharge from the hospital" at a rate that does not act as an incentive for MCOs to avoid transfer to "the appropriate level of care" or "placement" needed after discharge (305 ILCS 5/14-13(a) & (b)). As with the addition of prior authorization discussed above, the proposed rule augments the statutory language with a limiting requirement that Medicaid reimbursement is only mandatory when the lack of appropriate placement is in a "nursing facility level of care."

Post-acute placement could be in a number of settings, with different types of care recognized as "appropriate" under Public Act 101-0209, including, but not limited to, nursing facilities, inpatient rehabilitation facilities, or the patient's home. Regardless of the type of care to be provided at a post-acute setting, a hospital is still providing care to a Medicaid patient until an appropriate placement is secured and, pursuant to Public Act 101-0209, a hospital is entitled to reimbursement for those services. IHA believes that HFS would exceed its statutory authority by adopting this limitation on post-acute placement. **IHA requests that HFS remove the reference to "nursing facility level of care" proposed in subsection (c)(1).**

Applicability to MCOs

The proposed rule makes almost no mention of the MCOs, except to refer back to the notification requirement in Section 14-13(e) of the Public Aid Code, as added by Public Act 101-0209. Notably, the proposed rule does not similarly reference Section 14-13(c) of the Code, which requires the MCOs to adopt HFS' reimbursement rate, proposed at $289.48 per day, "or an alternative methodology that pays at least as much as the Department's adopted methodology unless otherwise mutually agreed upon contractual language is developed by the provider and the managed care organization for a risk-based or innovative payment methodology."

By specifically excluding the reimbursement mandate and remaining largely silent as to any other MCO limitations, IHA believes the proposed rule provides tacit permission for each MCO to impose their own additional requirements for reimbursement that are not provided by, or contrary to, Public Act 101-0209. Even if HFS removed references to "nursing facility level of care" and "prior authorization," as requested above, failure to clarify the statutory limitations on MCOs lends support to the MCOs applying their own rules.

While IHA understands and appreciates HFS' preference to regulate MCOs through amendments to the HFS-MCO contracts, as opposed to administrative rule, the absence of clearly applicable, publically available limitations on MCOs is problematic. This lack of transparency robs hospitals of the ability to participate in decisions that will directly affect their operations, hinders their ability to receive reimbursement, and prevents IHA and its member hospitals from assessing the legitimacy of MCO demands. IHA believes, and recent history has proven, these circumstances will lead to unnecessary conflict. **IHA requests that the rule be amended to clarify that MCOs are prohibited from imposing requirements for reimbursement beyond those explicitly outlined in statute.**

Unintended Applicability

The proposed rule, absent clarification, could conflict with established and acceptable hospital reimbursement programs. The intent of Public Act 101-0209 was to establish a reimbursement rate where a reimbursement process for such days did not already exist. Specifically, Long Term Acute Care Hospitals are reimbursed utilizing the state and MCOs' peer review organizations for similar services and freestanding Behavioral Health Hospitals are reimbursed by the Department of Children and Family Services (DCFS) for youth in care of DCFS and or youth in transition to the care of DCFS (i.e., lock-outs). **To avoid ambiguity, IHA requests that HFS explicitly exclude these programs in the final rule by amending subsection (c) as follows:**

c) Hospital Long Term Care Services
For dates of service on or after July 1, 2019, Hospital Long Term Care Days are days when hospital level of care is no longer necessary, and appropriate placement outside of the hospital is not available. When the initial hospital stay is reimbursed under the DRG system, only days that exceed the DRG average length of stay can qualify as Hospital Long Term Care Days. When a hospital is reimbursed on a per diem basis, only days beyond the period of time when hospital level of care is needed can qualify as Hospital Long Term Care Days. The requirements of this section shall not apply to:

A) A hospital described in Section 148.25(d)(4).

B) Services provided by a hospital described in section 148.25(d)(1), to individuals described in 20 ILCS 505/4d or as described in 305 ILCS 5/5-5.07. Such services will continue to be administered and reimbursed by the Department of Children and Family Services at the rates in effect on June 30, 2020.

Conclusion

IHA appreciates the challenging task of administering the Illinois Medicaid program and the difficulties MCOs have in their required role as Medicaid patients' care coordinators. Nevertheless, as stated above, IHA has serious concerns with the rule as proposed. IHA has engaged in a continuous dialogue with HFS and shared numerous constructive recommendations over the past year to help ensure timely and effective implementation of

Public Act 101-0209. In addition to the above recommendations, we urge HFS to incorporate these reasonable suggestions into the proposed rule.

We appreciate the opportunity to comment on the proposed rule and would be pleased to discuss our recommendations at your convenience.

Sincerely,

Dave Gross
Senior Vice President, Government Relations
Illinois Health and Hospital Association

cc: Kelly Cunningham