



# AMERICA'S ESSENTIAL HOSPITALS

November 3, 2020

Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 445-G  
200 Independence Ave. SW  
Washington, DC 20201

Dear Administrator Verma:

America's Essential Hospitals appreciates the agency's public statement of the withdrawal of the Medicaid Fiscal Accountability Regulation (MFAR). However, as MFAR is still listed on the Spring 2020 Unified Agenda, we ask that the administration **formally withdraw MFAR to avoid the significant challenges this regulation would cause our members, especially in light of the public health emergency.**

America's Essential Hospitals is the leading champion for hospitals and health systems dedicated to high-quality care for all, including vulnerable populations. Filling a vital role in their communities, our more than 300 member hospitals provide a disproportionate share of the nation's uncompensated care, and three-quarters of their patients are uninsured or covered by Medicare or Medicaid. Our members provide state-of-the-art, patient-centered care while operating on margins one-fifth that of other hospitals—1.6 percent on average compared with 7.8 percent for all hospitals nationwide.<sup>1</sup>

Essential hospitals have a unique position in the Medicaid delivery system. Given their largely low-income, disadvantaged patient populations, they are distinctly positioned to make a real and lasting impact on the lives and well-being of the most disadvantaged individuals. Given the reality of their patient mix and margins, our members depend on Medicaid funding to carry out their missions and remain viable.

We believe it is necessary for the Centers for Medicare & Medicaid Services (CMS) to publish a formal withdrawal of the MFAR proposed rule, in its entirety, in the *Federal Register*. Such action would officially withdraw the proposed MFAR rule, close out the entry in the regulatory agenda, and allow CMS to reengage meaningfully with stakeholders. This is the best course of action for both CMS and stakeholders. Further, **recent precedent exists by the Trump administration for the formal withdrawal of a regulation under similar circumstances.**

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<sup>1</sup> Clark D, Roberson B, Ramiah, K. *Essential Data: Our Hospitals, Our Patients—Results of America's Essential Hospitals 2017 Annual Characteristics Survey*. America's Essential Hospitals. April 2019.

In January 2017, the Department of Agriculture (DOA) proposed a rule that received significant opposition. In November 2017, DOA published a formal withdrawal of the proposed rule in the *Federal Register*, stating “We are withdrawing a proposed rule that would have revised our regulations regarding...certain genetically engineered organisms. We are taking this action after considering the comments we received following the publication of the proposed rule.” DOA explained its decision as follows: “[W]e have decided to withdraw the rule and to begin a fresh stakeholder engagement aimed at exploring alternative policy approaches. Because of rules limiting *ex parte* communications with respect to active rulemakings, publication of the 2017 proposed rule has constrained our ability to talk about alternatives with stakeholders. Withdrawing the proposed rule will lift this constraint and provide for a more open and robust policy dialogue.”<sup>2</sup> **This rationale applies equally to MFAR, and we urge the agency to issue a formal removal of the MFAR proposed rule.**

America’s Essential Hospitals appreciates your consideration of our concerns. If you have questions, please contact Senior Director of Policy Erin O’Malley at 202-585-0127 or [eomalley@essentialhospitals.org](mailto:eomalley@essentialhospitals.org).

Sincerely,

Bruce Siegel, MD, MPH  
President and CEO

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<sup>2</sup> 7 CFR Part 340. (2017). <https://www.govinfo.gov/content/pkg/FR-2017-11-07/pdf/2017-24202.pdf#page=1>