

November 29, 2019

Submitted electronically via the Federal eRulemaking Portal: <http://www.regulations.gov>

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

**Re: CMS–10709, Hospital Survey for Specified Covered Outpatient Drugs; Agency Information Collection Activities: Proposed Collection; Comment Request (Vol. 84, No. 189), September 30, 2019.**

Dear Administrator Verma,

Vizient, Inc. appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) notice to collect acquisition cost data for specified outpatient drugs acquired under the 340B Drug Discount Program.

### **Background**

[Vizient, Inc.](#) provides solutions and services that improve the delivery of high-value care by aligning cost, quality and market performance for more than 50% of the nation's acute care providers, which includes 95% of the nation's academic medical centers, and more than 20% of ambulatory providers. Vizient provides expertise, analytics, and advisory services, as well as a contract portfolio that represents more than \$100 billion in annual purchasing volume, to improve patient outcomes and lower costs. Headquartered in Irving, Texas, Vizient has offices throughout the United States.

### **Recommendations**

As a result of CMS's current payment reduction to 340B hospitals for Medicare Part B drugs, many Vizient members are already straining to provide needed care to the low-income patients they serve. As you know, the District Court has concluded in *American Hospital Association et al v. Azar* (Case number 1:18-cv-2084, December 27, 2018) that CMS does not have the statutory authority to implement the current nearly 30% decrease in Medicare reimbursement for drugs acquired under the 340B Program for calendar year (CY) 2018 (then again extended when CMS imposed

these payment reductions for CY 2019). Vizient has concerns that this data collection effort, aimed at only a subset of hospitals which are committed to serving their communities and partly rely on the 340B Program to do so, will further undermine their ability to provide high value, accessible health care. This data collection effort appears to counter the intent of Congress when it created the 340B Program and, due to its success, later expanded it to include additional covered entities.

Congress did not design the 340B Program to pay hospitals at acquisition cost, which is the stated goal of CMS in this notice. Rather, Congress designed it so that eligible hospitals could purchase covered drugs at discounted rates and use the difference to reach more eligible patients and provide more comprehensive services in their communities. Safety-net hospitals invest their 340B savings in a wide variety of programs and services to meet the needs of their communities and help vulnerable patients, at no cost to taxpayers.

Additionally, Vizient believes that this proposal runs counter to CMS's goal of reducing regulatory burdens and, in fact, would result in a significant expenditure of time and resources for hospitals in order to collect and submit this data. Hospitals are expected to report data for more than 400 HCPCS codes and 1,100 national drug codes, equaling tens of thousands of units of data. This is a significant undertaking, one which inevitably could lead to human error and where hospitals would likely need to redirect financial resources that would otherwise be used to care for low-income patients. For these reasons, we ask that CMS not move forward with this data collection.

### **Conclusion**

Vizient appreciates CMS's willingness to accept comments on this important issue, which provides a significant opportunity for stakeholders to inform the agency on how specific proposals will impact our members.

Vizient membership includes a wide variety of hospitals ranging from independent, community-based hospitals to large, integrated health care systems that serve acute and non-acute care needs. Additionally, many are specialized, including academic medical centers and pediatric facilities. Individually, our members are integral partners in their local communities, and many are ranked among the nation's top health care providers. In closing, on behalf of Vizient, I would like to thank CMS for providing us the opportunity to comment on this important proposed rule. Please feel free to contact me at (202) 354-2607 or [shoshana.krilow@vizientinc.com](mailto:shoshana.krilow@vizientinc.com), if you have any questions or if Vizient may provide any assistance as you consider these issues.

Respectfully submitted,



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Vizient, Inc.