

May 12, 2021

The Honorable Xavier Becerra
Secretary, U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington D.C. 20201

Dear Secretary Becerra,

Vizient, Inc. appreciates the comprehensive response to the COVID-19 Public Health Emergency (PHE) that the Department of Health and Human Services (HHS) has helped facilitate. In addition to providing significant flexibility to support hospitals and other providers caring for patients with COVID-19, HHS has also recognized the drastic change in care delivery and modified various policies to ensure hospitals are not inadvertently harmed due to the effects of the COVID-19 PHE. Consistent with HHS's ongoing activity, **Vizient requests that HHS provide additional clarity and flexibility to hospitals and other providers to ensure their participation in the 340B program is not jeopardized due to the impacts of the PHE.**

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.

As you know, the pandemic has caused drastic changes within the healthcare delivery landscape, including changes to hospitals' payer mix which have various downstream consequences. Included among those consequences, is that some hospitals that previously qualified as a Medicare Disproportionate Share Hospital (DSH) and thus were eligible to participate in the 340B program, may no longer be eligible for the program. Unfortunately, during the pandemic, hospitals have experienced a shift in their payer mix such that a lower proportion of Medicaid or Medicare Social Security Insurance patients are receiving care. As a result, hospitals that were previously eligible to participate in 340B may lose that status due to the pandemic – with some hospitals having already lost their 340B status likely as a result of this shift in payer mix. Given the critical role of the 340B program in enabling covered entities to stretch scarce federal resources as far as possible, Vizient urges HHS to proactively correct and address this harm to providers.

Specifically, Vizient encourages HHS to either waive certain eligibility requirements using its authority under Section 1135 of the Social Security Act or to provide a policy

in which eligibility status would depend on a hospital's cost report data from 2019, as opposed to 2020. Both options would be consistent with the approaches Congress and HHS have taken to mitigate other harmful consequences of the pandemic. For example, the American Rescue Plan Act of 2021 included a provision that ensures certain hospitals receive the same level of Medicaid DSH payments as anticipated had the pandemic not been in effect.¹ In addition, in the FY 2022 IPPS proposed rule, CMS proposes that the best available data for the purposes of ratesetting is the FY 2019 MedPAR claims file and the FY 2018 HCRIS dataset because the FY 2020 MedPAR file and the FY 2019 HCRIS dataset, which typically would have been used, both contain data significantly impacted by the COVID-19 PHE.² In fact, throughout the FY 2022 IPPS proposed rule, CMS proposes using pre-COVID-19 PHE data, or excluding or suppressing data collected during the COVID-19 PHE, such as in measures for quality payment programs. Further, regarding case-mix, CMS notes, "We believe that FY 2019 as the most recent complete FY prior to the COVID-19 PHE is a better approximation of the FY 2022 inpatient experience." **Therefore, to ensure hospitals and their communities are not further hurt by the pandemic and to promote a stable recovery, Vizient recommends HHS provide additional flexibility for 340B eligibility, including waiving certain eligibility requirements or allowing hospitals to rely on previous Medicare cost report data that is not significantly impacted by the COVID-19 PHE for purposes of 340B program eligibility.**

In closing, on behalf of Vizient, I would like to thank HHS for considering Vizient's request to maintain stability for hospitals and other providers. We believe providing such flexibility is not only warranted, but also consistent with policy approaches Congress and HHS have both advanced to adapt to the unfortunate circumstances of the COVID-19 PHE. Please feel free to contact me or Jenna Stern at jenna.stern@vizientinc.com, if you have any questions or if Vizient may provide any assistance as you consider this request.

Respectfully submitted,



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Vizient, Inc.

¹ American Rescue Plan Act, 2021 (Section 9819) – Special Rule for the Period of a Declared Public Health Emergency Related to Coronavirus (Directs the HHS Secretary to recalculate the Medicaid DSH allotments to take into account the higher federal share of Medicaid DSH expenditures under the FFCRA FMAP increase during the COVID-19 public health emergency period.

² <https://public-inspection.federalregister.gov/2021-08888.pdf>