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

**RE: CMS-1731-P, Medicare Program; FY 2021 Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS); Proposed Rule (Vol. 85, No.72), April 14, 2020**

Dear Ms. Verma:

Hackensack Meridian Health (“HMH”) is a leading not-for-profit health care organization that is the largest, most comprehensive and truly integrated health care network in New Jersey, comprised of a network of hospitals that includes three academic medical centers, two children’s hospitals, nine community hospitals, a behavioral health hospital, and two rehabilitation hospitals. HMH also has more than 500 patient care locations, including ambulatory care centers, surgery centers, home health services, long-term care and assisted living communities, ambulance services, lifesaving air medical transportation, fitness and wellness centers, rehabilitation centers, urgent care centers, and physician practice locations.

HMH provides a broad range of services to Medicare beneficiaries for which HMH providers receive payment from Medicare under various payment systems, including the (a) Hospital Inpatient Prospective Payment System (“IPPS”), (b) Inpatient Rehabilitation Facility Prospective Payment System (“IRF PPS”), (c) Inpatient Psychiatric Facilities Prospective Payment System (“IPF PPS”), (d) Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (“SNF PPS”), and (e) the Hospice Payment Rate System. HMH appreciates the opportunity to comment to the Centers for Medicare & Medicaid Services (“CMS”) about the above-referenced Notice of Proposed Rulemaking -- the Federal Fiscal Year (“FFY”) 2021 IPF PPS Proposed Rule (“IPF PPS Proposed Rule”), 85 Fed. Reg. 20,625 (Apr. 14, 2020).

Our comments address CMS’s Medicare wage index proposal to create a new core-based statistical area (“CBSA”), the New Brunswick-Lakewood, NJ (“NB-L”) CBSA, to be comprised of four New Jersey counties: Middlesex, Monmouth, Ocean, and Somerset. In the IPF PPS Proposed Rule, the description of this proposal starts at 85 Fed. Reg. at 20,631. Our specific focus is Monmouth, Middlesex, and Ocean Counties, where seven HMH acute care hospitals are located (HMH does not currently operate an acute care hospital in Somerset County). The proposal to

create the new NB-L CBSA is included in four other recently-issued CMS proposed rules.<sup>1</sup> Based on HMH’s preliminary analysis, if CMS were to finalize this single proposal across these five Proposed Rules, it would result in a significant reduction in Medicare payments to HMH in FFY 2021, which would be far larger in FFY 2022.

The proposal to create the new NB-L CBSA is based on a bulletin that the U.S. Office of Management and Budget (“OMB”) issued in 2018. While HMH recognizes that CMS typically tries to incorporate OMB updates within a year or two after they are issued, CMS has never before adopted wage index changes with a financial impact of this magnitude outside of a decennial census. And a Medicare payment cut of this magnitude is particularly unreasonable in the midst of the COVID pandemic, which has significantly increased costs for providers, while reducing revenues. For these and the other reasons set forth below, HMH respectfully asks CMS to delay finalizing the proposal to create the new NB-L CBSA in FFY 2021 but, rather, take a fresh look at the proposal at a later time. It will take years to fully absorb the impact of the COVID pandemic. HMH plans to provide more fulsome comments about this proposal when responding to the FFY 2021 IPPS Proposed Rule.

#### A. CMS’s Proposal to Create the NB-L CBSA

##### 1. Background on Selected OMB Standards and Bulletins from 2000 through 2013 and CMS’s Corresponding Changes to IPPS Rulemakings

In December 2000, OMB announced that beginning in 2003, it would adopt new standards for defining metropolitan areas into CBSAs. *See* Standards for Defining Metropolitan and Micropolitan Statistical Areas, 65 Fed. Reg. 82,228, 82,235-36 (Dec. 27, 2000)). The OMB standards designated and defined two kinds of CBSAs: Metropolitan Statistical Areas (“MSAs”) and Micropolitan Statistical Areas. *Id.* at 82,236. The 2000 OMB Standards also introduced “Metropolitan Divisions” to refer to a county or group of counties within a MSA with a population core of at least 2.5 million. *Id.* at 82,236, 82,238. On June 6, 2003, OMB released its revised definitions for statistical areas in the U.S based on the 2000 Standards and Census data, “the product of OMB’s once-a-decade comprehensive review of statistical area standards and definitions.” *See* OMB Bulletin 03-04 (June 6, 2003) (listing all MSAs, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the U.S. and Puerto Rico).

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<sup>1</sup> Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Proposed Policy Changes and Fiscal Year 2021 Rates (“FFY 2021 IPPS Proposed Rule”), 85 Fed. Reg. 32,460 (May 29, 2020) (comments due July 10, 2020); Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2021, 85 Fed. Reg. 22,065 (Apr. 21, 2020) (comments due June 15, 2020); FY 2021 Hospice Wage Index and Payment Rate Update, 85 Fed. Reg. 20,949 (Apr. 15, 2020) (comments due June 9, 2020); and Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Value-Based Purchasing Program for Federal Fiscal Year 2021, 85 Fed. Reg. 20,914 (Apr. 15, 2020) (comments due June 9, 2020) (collectively “the FFY 2021 Proposed Rules”).

In the FFY 2005 IPPS Final Rule, CMS largely adopted OMB’s new standards for defining metropolitan areas in CBSAs and the resulting designations for wage index purposes, including “Metropolitan Divisions.” *See* FFY 2005 IPPS Final Rule, 69 Fed. Reg. 48,916, 49,026–29 (Aug. 11, 2004). But CMS declined to adopt OMB’s delineations of “Micropolitan Areas” as separate and distinct labor market areas for purposes of the IPPS wage index, instead finalizing its proposal to treat Micropolitan Areas as “rural.” *Id.* at 49,029–32. This shows that, historically, CMS has not automatically accepted all OMB delineations. When adopting the OMB definitions and MSA designations in its wage-index labor market changes in the FFY 2005 IPPS Final Rule, CMS recognized the “significant payment impacts upon some hospitals because of these changes” and implemented a number of “transitional provisions” to ameliorate those impacts. *Id.* at 49,032–34.

In 2010, OMB (a) adopted Standards for Delineating Metropolitan and Micropolitan Statistical Areas that superseded OMB’s 2000 Standards and (b) noted its intention to announce delineations based on these standards in 2013 using 2010 Census data and 2006–2010 American Community Survey (“ACS”) 5-year estimates. *See* OMB Notice, 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas, 75 Fed. Reg. 37,246, 37,251 (June 28, 2010). In OMB Bulletin No. 13–01, dated February 28, 2013, OMB issued revised delineations for MSAs, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. CMS largely implemented the 2010/2013 OMB delineations in the FFY 2015 IPPS Final Rule, noting that “[w]hile the revisions OMB published on February 28, 2013 are not as sweeping as the changes OMB announced in 2003, the February 28, 2013 bulletin does contain a number of significant changes.” 79 Fed. Reg. 49,853, 49,951–52 (Aug. 22, 2014). “For example, under the new OMB delineations, there would be new CBSAs . . . and existing CBSAs would be split apart.” *Id.* at 49,951.

As particularly relevant for HMH hospitals, based on OMB Bulletin 13-01, the FFY 2015 IPPS Final Rule created new urban CBSA 35614 (New York-Jersey City-White Plains, NY-NJ (“NY-NJ CBSA”)), which included Middlesex, Monmouth, and Ocean Counties (previously in CBSA 20764). *Id.* at 49,956. CMS stated in that Final Rule that it believed “using the most current delineations will increase the integrity of the IPPS wage index system by creating a more accurate representation of geographic variations in wage levels. We have reviewed our findings and impacts relating to the new OMB delineations, and find no compelling reason to delay implementation.” 79 Fed. Reg. at 49,951.

This confirmed CMS’s preference for using “the most current [OMB] delineations” because they allegedly will “increase the integrity of the IPPS wage index system by creating a more accurate representation of geographic variations in wage levels,” while noting that the agency had “reviewed our findings and impacts relating to the new OMB delineations” and, importantly, found “no compelling reason to delay implementation.” Thus, before accepting an OMB delineation, CMS has obligated itself to make and justify an affirmative determination that there is no “compelling reason to delay implementation.”

## 2. OMB Bulletins 18-03 and 18-04

OMB stated in its 2010 Standards that it generally would limit its yearly updates (after its initial delineations based on the 2010 standards and 2010 Census) only to identifying new

metropolitan and micropolitan statistical areas. But OMB also stated that it would conduct a broader review in 2018 by “reviewing the delineations of all existing CBSAs and related statistical areas in 2018 using 2011–2015 5-year commuting and employment estimates from the [ACS].” 75 Fed. Reg. at 37,251. We believe that the use of ACS data from 2011 through 2015 may have been particularly prejudicial to Middlesex, Monmouth, and Ocean counties because they were still recovering from Super Storm Sandy, which hit the area in October 2012 and was followed by an extended post-storm recovery period.<sup>2</sup>

In OMB Bulletin No. 18–03, dated April 10, 2018, OMB presented “information on the statistical areas that are recognized under the 2010 standards using data from 2010 Census, the [ACS] and Census Bureau population estimates for 2015 and 2016.” OMB Bulletin 18-03, Appendix at 3. This resulted in the following two new designations: a new Micropolitan Statistical Area 37770 (Pearsall, TX), and new Combined Statistical Area 484 (San Antonio-New Braunfels-Pearsall, TX). OMB Bulletin 18-03, Attachment at 1. Soon after issuing OMB Bulletin No. 18–03, OMB took the unusual step of issuing OMB Bulletin No. 18–04, dated September 14, 2018.

OMB Bulletin No. 18–04 included an Appendix with “information on the statistical areas that are recognized under the 2010 standards using data from 2010 Census, the [ACS] and Census Bureau population estimates for 2015” (Bulletin 18-04, Appendix at 3), but did not provide an attachment specifically identifying its updates to statistical areas, as it routinely had done previously with the limited updates and revisions to statistical areas in years between the decennial censuses. *See, e.g.*, OMB Bulletins 15-01, 17-01, and 18-03. And unlike previous OMB Bulletin updates outside of a decennial census, OMB did not provide a comparison of the lists of statistical areas in OMB Bulletin 18-04 with those in OMB Bulletin 18-03 (which 18-04 updated and superseded). As specifically relevant here, OMB Bulletin 18-04 created a new “Metropolitan Division” 35154 (New Brunswick-Lakewood, NJ Metropolitan Division) comprised of four New Jersey counties: Middlesex, Monmouth, Ocean, and Somerset.

3. Proposed Wage Area Changes in the FFY 2021 Proposed Rules in Response to OMB Bulletin 18-04

CMS has noted in numerous Medicare rulemakings that OMB’s significant revisions to statistical areas typically occur only as a result of the decennial census: “Generally, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census.” *See, e.g.*, FFY 2021 IPF PPS Proposed Rule, 85 Fed. Reg. at 20,632. CMS further noted that OMB

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<sup>2</sup> According to Federal Emergency Management Agency’s (“FEMA’s”) website, “Sandy is now considered the second-costliest hurricane in United States history, second only to Hurricane Katrina. The storm impacted much of the East Coast; displacing over 23,000 residents requiring temporary shelter and resulting in more than \$65 billion in damage.” “FEMA’s Individuals and Households Program disbursed \$1.4 billion to 179,016 individuals and households impacted by Sandy in New Jersey and New York. More than \$1.2 billion of this was dedicated to housing assistance, including costs for temporary housing, repair or replacement of eligible damaged property, and other disaster-related expenses not covered by homeowner’s or renter’s insurance.” *See* <https://www.fema.gov/sandy-recovery-region-ii>.

“occasionally” issues statistical area updates between decennial censuses, but that these updates are typically “minor.” *Id.* (“However, OMB occasionally issues minor updates and revisions to statistical areas in the years between the decennial censuses through OMB Bulletins.”).

Thus, it is unprecedented for the FFY 2021 Proposed Rules to include a proposal to make “material changes” or a “significant rearrangement” to wage areas between decennial censuses. *See* FFY 2021 IPF PPS Proposed Rule, 85 Fed. Reg. at 20,633 (“While OMB Bulletin No. 18–04 is not based on new census data, it includes some material changes to the OMB statistical area delineations . . . ); *see also* FFY 2021 IPPS Proposed Rule, 85 Fed. Reg. at 32,704 (emphasis added):

There would also be a significant rearrangement in the constituent counties among the New York City Area Metropolitan Divisions. Most notably, Monmouth, Middlesex, and Ocean Counties in NJ would move from the current CBSA 35614 (New York-Jersey City-White Plains, NY-NJ) to the proposed CBSA 35154 (New Brunswick-Lakewood, NJ). Also, Somerset County, NJ would move from current CBSA 35084 (Newark, NJ-PA) to CBSA 35154.

CMS underscored the magnitude of this proposal, which is “not based on new census data,” by proposing a “transition policy”:

As previously mentioned, while the revised OMB delineations in this latest OMB bulletin (OMB Bulletin 18-04) are not based on new census data, there were some material changes in the OMB delineations. Also, as previously mentioned, the revisions in the latest OMB bulletin are updates to the CBSA delineations already adopted in FY 2015 based on the 2010 census data. For these reasons, for FY 2021 we do not believe it is necessary to implement the multifaceted transitions we established in FY 2015 for the adoption of the new OMB delineations based on the new decennial census data. However, in accordance with our past practice of implementing transition policies to help mitigate negative impacts on hospitals of certain wage index proposals, we do believe that if we adopt the proposed revised OMB delineations, it would be appropriate to implement a transition policy since, as previously mentioned, some of these revisions are material, and may negatively impact payments to hospitals.

FFY 2021 IPPS Proposed Rule, 85 Fed. Reg. at 32,706 (emphasis added); *see also* IPF PPS Proposed Rule, 85 Fed. Reg. at 20,638-39 (acknowledging that “some providers would experience a decrease in wage index due to implementation of the proposed new OMB delineations and wage index updates” and “providing for a transition period to mitigate the resulting short-term instability and negative impacts on these providers and provide time for them to adjust to their new labor market area delineations and wage index values.”).

## B. Financial Impact on HMM of the Proposal to Create the NB-L CBSA

Monmouth, Middlesex, and Ocean Counties are currently part of the NY-NJ CBSA. IPF PPS Proposed Rule, 85 Fed. Reg. at 20,638. The Medicare payment reductions resulting from the proposed changes to the New Jersey CBSAs would apply to almost every component of the HMM

Network, including the largest impacted sector - the seven HMH IPPS hospitals – each of which would be moved from the NY-NJ CBSA to the NB-L CBSA. Also negatively impacted would be the distinct part units associated within these hospitals and HMH’s nursing homes, home care, and other facilities with wage-index sensitive Medicare payments.

C. CMS has Discretion Whether or Not to Adopt the Changes in OMB Bulletin 18-04

CMS is not required by law or regulation to follow OMB’s delineations. While CMS cannot change OMB standards, CMS has previously exercised its discretion to pick and choose among OMB delineations based on the agency’s analysis of what is best for Medicare wage index purposes. Thus, CMS is not required to adopt the delineations in OMB Bulletin 18-04 and did not adopt these delineations in the FFY 2020 IPPS Final Rule to allow more time to study them. FFY 2021 IPPS Proposed Rule, 85 Fed. Reg. at 32,696 (emphasis added) (“CMS was unable to complete an extensive review and verification of the changes made by these [OMB 2018] bulletins until after the development of the FY 2020 IPPS/LTCH PPS proposed rule.”). CMS should similarly decline to do so for purposes of FFY 2021 and wait until 2020 Census data is available before making a change of such magnitude.

Even when expressing support for using OMB’s delineations, CMS noted that they are not specifically designed for Medicare wage index purposes.

While we recognize that MSAs are not designed specifically to define labor market areas, we believe they do represent a useful proxy for this purpose.

FFY 2005 IPPS Final Rule, 69 Fed. Reg. at 49,027. CMS has also acknowledged that OMB delineations are not a perfect fit for determining wage areas for purposes of the Medicare wage index.

While CMS and other stakeholders have explored potential alternatives to the current CBSA-based labor market system (we refer readers to the CMS Web site at: [www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Wage-Index-Reform.html](http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Wage-Index-Reform.html)), no consensus has been achieved regarding how best to implement a replacement system.

FFY 2015 IPPS Final Rule, 79 Fed. Reg. 49,853, 49,951 (Aug. 22, 2014).

And while CMS typically adopts OMB statistical delineations for wage index purposes, there have been exceptions, including CMS’s rejection of OMB’s delineation of “Micropolitan Statistical Areas,” as described in various Medicare rulemakings:

As discussed in the FY 2005 IPPS final rule (69 FR 49029 through 49032), CMS considered whether to use Micropolitan Statistical Areas to define the labor market areas for the purpose of the IPPS wage index. OMB defines a ‘Micropolitan Statistical Area’ as a CBSA ‘associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000’ (75 FR 37252). We refer to these areas as Micropolitan Areas. After extensive impact analysis, CMS determined the best course of action would be to treat all hospitals located in

Micropolitan Areas as ‘rural’ and include them in the calculation of each State’s rural wage index.

FFY 2015 IPPS Final Rule, 79 Fed. Reg. at 49,952 (emphasis added); *see also* IPF PPS Proposed Rule, 85 Fed. Reg. at 20,633-34.

Where CMS is faced with more significant OMB changes, which have previously arisen only as a result of a decennial census, CMS typically will delay implementation to allow full consideration of the changes. Thus, despite its desire “to use the latest labor market area delineations available as soon as is reasonably possible in order to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions,” CMS historically has not simply uncritically accepted all OMB delineations for Medicare wage index purposes. Rather, before accepting an OMB delineation, CMS has obligated itself to (a) to conduct an “extensive impact analysis” of new OMB statistical area delineations, (b) “extensively review and verify” all “ramifications,” and (c) make an affirmative determination that there is no “compelling reason to delay implementation.”

D. CMS Should Not Finalize the Proposed Changes to the New Jersey CBSAs Because of the COVID Pandemic and Other “Compelling Reasons”

There are many “compelling reasons” for CMS not to finalize the proposed changes to the New Jersey CBSAs but, rather, take a fresh look at the proposal for FFY 2022 or later.

1. The Effect of the COVID Pandemic

The most immediate concern is the effect of the COVID pandemic, which has caused extraordinary increases in costs, and revenue loss, that probably hit HMH hospitals as hard (or harder) than any other hospitals in the country. CMS likely could not have considered the effect of the proposed New Jersey CBSA changes on providers in light of the COVID pandemic before including them in the FFY 2021 Proposed Rules. CMS noted in the Proposed Rules that it was not able to account for the effect of OMB Bulletin 20-01 because that Bulletin was issued on March 6, 2020 and, thus, was too late to be considered. *See, e.g.*, FFY 2021 IPF PPS Proposed Rule, 85 Fed. Reg. at 20,633. Because the devastating effect of the COVID crisis did not start to be fully realized until after March 6, 2020, it obviously also was too late for CMS to take into account in the Proposed Rules how extensive the effect would be.

Moreover, the COVID crisis is not nearly over, with many epidemiologists believing that it could be as bad or even worse during the 2020-2021 flu season. Because of the significant COVID-related costs that HMH hospitals and other facilities have incurred to date, the uncertainty of what HMH facilities will face in FFY 2021, and the need to evaluate updated census data, CMS’s better course at this time would be to delay the New Jersey CBSA proposal until the impact of the COVID pandemic has been fully absorbed – which will likely take years to overcome.

2. CMS’s Actions Are Unprecedented and Inconsistent with Prior Agency Action

Adopting the proposed changes would be inconsistent with prior agency action because CMS has never before adopted wage area changes of this magnitude except when implementing a

decennial census. CMS acknowledged in the FFY 2021 IPF PPS Proposed Rule that updates to the CBSA delineations, outside of the decennial census, historically have been minor:

Generally, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. However, OMB occasionally issues minor updates and revisions to statistical areas in the years between the decennial censuses through OMB Bulletins.

FFY 2021 IPF PPS Proposed Rule, 85 Fed. Reg. at 20,632 (emphasis added). The FFY 2021 IPPS Proposed Rule cited several prior IPPS rulemakings where CMS proposed and later finalized such minor, interim changes, while acknowledging that OMB Bulletin 18-04 was different:

Typically, interim OMB bulletins...have only contained minor modifications to labor market delineations. However the April 10, 2018 Bulletin No. 18-03 and the September 14, 2018 OMB Bulletin No. 18-04 included more modifications to the labor market areas than are typical...including some material modifications that have a number of downstream effects...

FFY 2021 IPPS Proposed Rule, 85 Fed. Reg. at 32,696. CMS goes on to point out that, unlike change resulting from a decennial census, these changes are “not based on new census data.” 85 Fed. Reg. at 20,633.

It is also unprecedented for CMS to create a Metropolitan Division outside of a decennial census. OMB warned in Bulletin 18-04 (at 2, emphasis in original) that agencies should not use the Metropolitan Division in the Bulletin without conducting its own “research and analysis.”

The 2000 standards also introduced the construct “Metropolitan Division,” which is used to refer to a county or group of counties within a Metropolitan Statistical Area that has a population core of at least 2.5 million. While a Metropolitan Division is a subdivision of a larger Metropolitan Statistical Area, it often functions as a distinct social, economic, and cultural area within the larger region. Metropolitan Divisions can be directly compared with each other, but comparisons of them with entire Metropolitan Statistical Areas would be inappropriate. Federal agencies will continue to provide detailed data for each Metropolitan Division.

OMB Bulletin 18-04 added in the Appendix:

The criteria used to determine what counties are included in a [MSA] are different from the criteria that are used to group counties in Metropolitan Divisions, which represent the subdivisions of (larger) [MSAs]. As a result, it is generally not appropriate to rank or directly compare Metropolitan Divisions (or NECTA Divisions) with Metropolitan and Micropolitan Statistical Areas (or Metropolitan and Micropolitan NECTAs). However, because of the large population concentrations represented by Metropolitan Divisions, it may be desirable for some analyses, for example, to include Metropolitan Divisions in a table in which [MSAs] are ranked. It would, of course, be appropriate to rank and compare



Metropolitan Divisions. Even though Metropolitan Divisions represent subdivisions of (larger) [MSAs], they often function as distinct areas within [MSAs]. Researchers analyzing demographic and economic patterns, trends, and processes within large [MSAs] should also take into consideration data for specific Metropolitan Divisions.

OMB Bulletin 18-04 Appendix at 5 (emphasis added).

Thus, OMB highlights the differing criteria used to delineate MSAs and Metropolitan Divisions and cautions against direct comparisons or rankings. OMB's acknowledgement that "it may be desirable for *some* analyses" (emphasis added) to use Metropolitan Divisions in the same table as MSAs (against OMB's general advice) simply underscores the exceptional care, additional analyses, and explanation an agency must provide when seeking to compare MSAs with Metropolitan Divisions, as CMS does with its wage-index CBSAs. Failure to do so with regard to the New Jersey CBSA proposal is not only inconsistent with prior agency action but also without an explanation that is sufficient to justify CMS's change in practice.

### 3. CMS Did Not Analyze and Explain Why It Followed OMB Bulletin 18-04

CMS states that it believes that using the revised delineations in OMB Bulletin 18-04 will "increase the integrity of the IPF PPS wage index system" (IPF PPS Proposed Rule, 85 Fed. Reg. at 20,633), but CMS has not provided any explanation as to the integrity shortcomings in the current system that would be corrected by changing the New Jersey CBSAs. Moreover, despite having "carefully analyzed the impacts of adopting the new OMB delineations" made by OMB Bulletin 18-04, CMS did not explain what it analyzed, the results of that review, and the basis for CMS's decision to implement OMB Bulletin 18-04. *See id.* Such a review is particularly important here because (a) CMS has noted that OMB's delineations are not specifically designed for Medicare wage index purposes and (b) OMB itself has cautioned about use of its delineations for non-statistical purposes. Also, there are concerns about the representativeness of the data used in OMB Bulletin 18-04 because it relies on data from when the four New Jersey counties at issue were still recovering from Super Storm Sandy, which hit the area in October 2012.

Given that, notwithstanding OMB's cautionary statement, CMS has elected to use geographic delineations created using different criteria to define its labor market areas, CMS should more closely and transparently scrutinize and explain any changes to OMB Metropolitan Divisions before proposing labor markets based on such changes. This should include analyzing both the propriety of OMB's delineations, the Census Bureau and other data that has been applied, and the unique impacts using the delineations for Medicare labor markets will have, as well as providing those analyses for stakeholder review and comment. OMB Bulletin 18-04 (at 3) specifically assigns to agencies, like CMS, that use OMB delineations for nonstatistical programs, responsibility for ensuring the appropriateness of such use and further recommends that such agency seek public comment on the proposed use:

In cases where there is no statutory requirement and an agency elects to use the Metropolitan, Micropolitan, or Combined Statistical Area delineations in nonstatistical programs, it is the sponsoring agency's responsibility to ensure that

the delineations are appropriate for such use. When an agency is publishing for comment a proposed regulation that would use the delineations for a nonstatistical purpose, the agency should seek public comment on the proposed use.

Thus, at the least, CMS should hold off making the proposed New Jersey CBSA changes until there is proper notice with sufficient explanation to affected providers, which CMS did not provide in the Proposed Rules.

4. CMS Should Not Take Any Action on Changing New Jersey CBSAs Until 2020 Decennial Census Data is Available

With 2020 being a decennial census year, CMS should wait for the more accurate data rather than rely on data that is five to nine years old. As CMS stated:

We believe it is important for the IPPS to use the latest labor market area delineations available as soon as is reasonably possible in order to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions.

FFY 2015 IPPS Final Rule, 79 Fed. Reg. at 49,951. Because the proposed New Jersey CBSA changes are not based on decennial census data, but rather on “material changes in the OMB delineations,” it would be more appropriate to address them using the new 2020 census data.

E. Conclusion


Thank you for the opportunity to comment on the FFY 2021 IPF PPS Proposed Rule. While HMH recognizes that CMS typically incorporates OMB updates within a year or two after they are issued, CMS has never before adopted wage index changes with a financial impact of this magnitude outside of a decennial census. And making a change of such a severe financial magnitude is particularly unreasonable in the midst of the COVID pandemic. Thus, CMS should hold off finalizing the proposed New Jersey CBSA delineations. Instead, CMS should wait for the regular cycle based on the decennial census to make this kind of a change, if the decennial data actually supports such a change.

We would be pleased to discuss any of the above in greater detail at any time. If you have any questions, please feel free to contact me at 848-888-4405 or Robert.Glenning@HackensackMeridian.org, or Kathryn Gibbons, HMH’s Vice President, Finance Reimbursement, Budgeting, & Revenue Analytics, at 732-751-3372 or Kathryn.Gibbons@Hackensackmeridian.org.

Sincerely,

Robert  
Glenning

Robert Glenning  
President, Financial Services Division and  
Chief Financial Officer

 Digitally signed by Robert  
Glenning  
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