



Maryland  
Hospital Association

August 28, 2020

The Honorable Benjamin L. Cardin  
509 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Christopher Van Hollen  
110 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Andy Harris  
2334 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Steny Hoyer  
1705 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Kweisi Mfume  
2163 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable A. Dutch Ruppersberger  
2206 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable David Trone  
1213 Longworth House Office Building  
Washington, D.C. 20515

The Honorable John Sarbanes  
2370 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Jamie Raskin  
412 Cannon House Office Building  
Washington, D.C. 20515

The Honorable Anthony G. Brown  
1323 Longworth House Office Building  
Washington, D.C. 20515

Dear Maryland Congressional Delegation:

I write to you on behalf of the Maryland Hospital Association's 61-member hospitals and health systems and their more than 100,000 dedicated caregivers.

Since March, Maryland hospitals have been on the frontlines fighting the COVID pandemic, focusing on patient care, working with state officials on all facets of planning, while being responsive to the ever-changing federal data reporting requirements.

On August 25, with virtually no notice and no opportunity for public comment, the Centers for Medicare & Medicaid Services (CMS) released a new interim final rule that jeopardizes the ability of Maryland hospitals to care for their patients during this most challenging of times. The rule will go into effect upon publication in the Federal Register; we're told that could happen within a day or two.

The 202-page rule is dense and unwieldy, covering multiple areas of operations of significance to hospitals and other providers. The provisions enumerated will necessitate extensive operational changes, making the lack of notification and opportunity to comment extremely concerning. Most troublesome, the rule creates new enforcement mechanisms to

severely punish any hospital that is unable to meet the burdensome reporting demands, at a time when hospitals instead need their administrative burdens alleviated to deliver urgently needed health care. **We therefore ask you to urge CMS to retract this rule before publication.**

While we digest the totality of the rule and its impact, below are a few of the most problematic provisions we have identified so far.

### **A. Hospital Data Reporting as a Condition of Participation**

Following a series of federal policy changes to the hospital COVID data reporting structure and process, **the new interim final rule now makes this daily reporting a mandatory Condition of Participation for Medicare.** Since the start of the pandemic, hospitals have worked tirelessly to follow the ever-changing, at times conflicting, federal demands and guidance on data reporting. The attached American Hospital Association infographic shows the numerous changes to data reporting requirements over the past six months.

Notwithstanding the federal government's many changes, 100% of Maryland's hospitals have complied with all requests and they are all submitting data in the format and frequency specified by the HHS Secretary. Still, the notion that hospitals could face expulsion from the Medicare program for noncompliance with this new, now mandatory requirement, is deeply concerning.

### **B. Laboratory Data Reporting Requirement**

On June 4, HHS issued guidance<sup>1</sup> to laboratories nationwide defining the data elements and frequency they must follow when reporting COVID test results to state or local public health channels, to implement Section 18115(a) of the CARES Act. One week prior to the August 1 reporting deadline, the requested data elements were increased to include a list of 18 patient symptoms to document as part of the laboratory order—data elements not captured in the normal lab reporting workflow. The disorganization and shifting guidelines mean constant reprogramming of software and retraining of staff. Hospital labs are stretching beyond their limits to comply. Maryland hospitals are extremely concerned that **CMS is now imposing civil monetary penalties upon any laboratories that fail to meet these overwhelming reporting requirements.**

### **C. Limiting COVID Testing**

Maryland's robust testing strategy has been pivotal in our state's efforts to combat COVID and flatten the epidemiological curve. Ubiquitous testing sites and an intensive education campaign encouraging testing have helped identify and track COVID cases. That makes it easier to target responses to geographic areas of increased spread, especially for vulnerable populations such as seniors. Underlying this testing strategy is the ability for Marylanders to go to testing sites without providers' orders. The flexibilities CMS gave in its earlier (May 8)

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<sup>1</sup> <https://www.hhs.gov/sites/default/files/covid-19-laboratory-data-reporting-guidance.pdf>

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interim final rule<sup>2</sup> allowed Medicare beneficiaries to get tested without a provider's order, meaning they could avail themselves of the testing offered at these sites.

Now, just three and a half months later, while the COVID pandemic still rages, this interim final rule limits that flexibility. **Medicare beneficiaries will be allowed to receive only one COVID test without an order as part of their benefits.** Subsequent tests will only be covered if a beneficiary has a provider's order to be tested. This rollback of coverage poses a direct and immediate threat to Maryland's comprehensive testing structure.

We appreciate your leadership and your partnership throughout this pandemic. Congressional and CMS efforts have been instrumental to the ability of our hospitals to care for all Marylanders. Yet, with the new rule, CMS endangers our residents. At the very least, the agency ought to have given hospitals and providers the chance to hear the reasons for the changes and give constructive feedback. **We therefore urge you to support Maryland's hospitals and providers by calling on CMS to halt publication of this deleterious rule.**

Sincerely,



Bob Atlas  
President & CEO

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<sup>2</sup> <https://www.federalregister.gov/documents/2020/05/08/2020-09608/medicare-and-medicaid-programs-basic-health-program-and-exchanges-additional-policy-and-regulatory#h-18>