

January 12, 2026

Ms. Katie Wilder
Independent Contractor (Index Analytics LLC)
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Ms. Wilder,

We, the undersigned associations, collectively represent the more than 3,000 hospitals that are paid under the Outpatient Prospective Payment System (OPPS). On behalf of those members, we respectfully request that you correct recent statements wrongly suggesting that hospitals are required to complete the OPPS Drug Acquisition Cost Survey (ODACS).

Before the ODACS's formal launch on January 1, 2026, you authored a Frequently Asked Questions document on behalf of the Centers for Medicare & Medicaid Services (CMS).¹ Unfortunately, the FAQ contains statements suggesting that hospitals must complete the drug cost acquisition survey. For example, Frequently Asked Question 1.7 ("Am I required to submit my outpatient drug cost data?") does not simply answer "no." Instead, it states: "All hospitals paid under OPPS between July 1, 2024 and June 30, 2025, are part of the survey design, and all such hospitals are to respond to the survey."²

This statement contradicts what the agency said in its CY 2026 Hospital OPPS and Ambulatory Surgical Center (ASC) Payment System final rule. There, CMS stated: **"We agree that section 1833(t)(14)(D) of the Act does not itself mandate specific consequences ... on hospitals for failing to respond to that survey."**

The agency's statement from the final rule cannot be squared with the FAQs. Absent any statutory consequences for not completing the survey, it is wrong to tell hospitals and health systems that they "are to" complete it.³

To be sure, the final rule suggests potential ways in which CMS may interpret non-responses to the survey, which the FAQ notes. But the agency has not provided any legal basis for those options. At most, the final rule quotes 42 U.S.C. 1395l(t)(14)(A)(iii)(I) and states that the agency has "made no final decision on how, if at all, we will 'take[e] into account' non-responses." We do

¹ <https://www.cms.gov/files/document/odacs-faq.pdf>

² Question 1.5 ("Which hospitals need to participate?) repeats the same "are to" language. *See id.* And other recent CMS statements incorrectly suggest that hospitals are required to complete the survey. For example, CMS's December 4, 2025 edition of the "MLN Connects Newsletter" stated: "Hospitals that received OPPS payments for outpatient drugs from July 1, 2024 – June 30, 2025, must complete the survey and report data on all payable outpatient drugs purchased during this period." https://www.cms.gov/training-education/medicare-learning-network/newsletter/mln-connects-newsletter-december-4-2025#_Toc215666340

³ *E.g., California v. Texas*, 593 U.S. 659, 676 (2021) ("A penalty might have led some inertia-bound individuals to enroll. But without a penalty, what incentive could the provision provide?").

not believe that this (or any other) statute authorizes CMS to confer any significance to non-responses in setting payment rates for covered outpatient drugs. **As the undersigned have previously explained, our members have serious concerns about the burdens imposed by the drug acquisition cost survey. Those burdens alone are reasons for hospitals to choose not complete a *non-mandatory* survey.** Regardless, given that CMS has not yet determined how it will treat non-responses and offers no legal authority for the options it has suggested, we struggle to understand why the FAQ does not simply repeat what the agency previously stated in the final rule, *i.e.*, **individual hospitals face no “consequences … for failing to respond to that survey.”**

We respectfully ask that you correct the FAQ. If federal law does not impose any specific consequences on hospitals for not completing the survey, it is confusing to suggest that hospitals “are to” complete it.

We appreciate your consideration of this request.

Sincerely,

America's Essential Hospitals
American Hospital Association
American Society of Health-System Pharmacists
Association of American Medical Colleges
Catholic Health Association
Children's Hospital Association
340B Health