August 16, 2023

The Honorable Chiquita Brooks-LaSure
Administrator, The Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20101

RE: CMS-1780-P. Comments relating to Medicare Program; 2024 Home Health Prospective Payment System Proposed Rule

Dear Administrator Brooks-LaSure:

On behalf of the National Hospice and Palliative Care Organization (NHPCO), The National Association for Home Care & Hospice (NAHC), The National Partnership for Healthcare and Hospice Innovation (NPHI), and LeadingAge, we appreciate the time and effort expended by the Centers for Medicare & Medicaid Services (CMS) and the Technical Expert Panel (TEP) in development of the proposed Hospice Special Focus Program (SFP). We strongly support the SFP's goal to "identify hospices as poor performers, based on defined quality indicators, in which CMS selects hospices for increased oversight to ensure that they meet Medicare requirements" and believe the appropriate quality indicators are essential in identifying hospice providers who would most benefit from the program. We have concerns that the quality indicators identified in the proposed CY 2024 Home Health rule will not fully identify all hospices at high-risk of delivering poor-quality care and may also result in hospices that take care of large numbers of patients being disproportionately and unfairly categorized as poor-performers merely as a result of their size.

For the reasons highlighted in this letter below, we **ask that CMS work to improve the SFP algorithm prior to its application to hospices and implement a preview year where all providers are given preview reports of their performance ranking under the algorithm metrics. This may require a delay in implementation and that CMS issue a new proposed rule with the modified algorithm to give stakeholders the opportunity to comment**. This would help providers understand the algorithm and where they need to target improvements to ensure high-quality care. It would also provide more time to refine the algorithm to be sure the program is capturing an appropriate subset of hospices.

The consequences of being selected for the SFP are severe, which is why the selection criteria must be designed to identify the subset of hospices that are *most* in need of remediation to address quality concerns. As currently constructed, we are concerned that the SFP algorithm would not only miss the opportunity to improve truly poor-performing hospices, but also could unfairly identify higher-performing hospice programs based on factors that are not as germane to patient and family care quality and satisfaction (e.g.., size of the hospice). The ramifications of a poorly targeted selection process could inadvertently lead to access issues for beneficiaries and their families.

Survey Reports with Condition-Level Deficiencies (CLDs) and Complaints with Substantiated Allegations

Although we agree that survey data should be part of the algorithm for the SFP, there are concerns with the survey process and data that CMS must address prior to utilizing this indicator:

- **Scaling the data**: The Technical Expert Panel (TEP) reviewed an SFP model where both Quality-of-Care CLDs and substantiated complaints were scaled as CLDs/substantiated complaints per

100 beneficiaries served, except for hospices in the smallest size quartile (less than 57 beneficiaries, in this instance) for which the raw number was used. This was to ensure that larger hospices were not at a disadvantage compared to smaller hospices. However, this was not included in the proposed SFP design. Scaling the data is essential to ensure programs are comparable. For example, a large provider who has received two substantiated complaints for an average daily census (ADC) of 500 does not raise the same level of concern as a provider who has two substantiated complaints but an ADC of 50. If the goal is to ensure beneficiaries are receiving patient-centered, quality hospice care, it is necessary to review these data as ratios rather than raw numbers.

- **Out-of-date surveys**: Due to the COVID-19 pandemic and appropriate increased oversight, many hospices have not received a survey every 36 months as required per § 488.1110. This creates an unequal review of complaints and CLDs for providers across the country.
- **Inconsistent surveys**: Many hospices have varied experiences with surveyors. CMS only revised the *State Operations Manual, Appendix M – Hospice* in January 2023, which included standardized training for all surveyors across both AOs and SAs. More time is needed to allow the updated survey guidance to spread throughout the industry to ensure greater alignment between different survey entities' processes and procedures.

Hospice Quality Reporting Program (HQRP): Hospice Care Index (HCI)

We support the use of the claims data-based HCI measure in the SFP algorithm, but with 21.7% of hospices not assigned a publicly-reported HCI score[1], we fear a significant number of hospices would not be captured based on this indicator, and therefore as currently structured, it would not be sufficient to compare all hospice providers evenly. Based on our analysis, we found providers without HCI scores were less likely to be included in the 10th percentile and, therefore, less likely to be included in the SFP[1]. In addition, according to analysis based on publicly-available data, hospices that did not have an HCI score had dramatically more CLDs per beneficiary yet were less likely to fall into the bottom 10% of hospices. [1]. Thus, hospices more deserving of the SFP were less likely to be included.

Hospice Quality Reporting Program (HQRP): Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Hospice Survey

We strongly agree the patient and family voice must be included in any algorithm for the SFP; however, there are major limitations with the existing CAHPS® Hospice Survey data that we believe need to be addressed before CAHPS is incorporated into the algorithm. CMS' own TEP raised similar concerns, with the TEP report stating that "*TEP members strongly believed that CAHPS® Hospice Survey data are critical to include in the SFP selection algorithm because those data capture family and caregiver experiences. However, members were concerned by CAHPS®' limited availability*" and "[TEP] *Members were concerned by the limited availability of data, particularly since only one-third of hospices had a publicly reported CAHPS® Hospice Survey Star Rating. Members also expressed concern that providers would not be "on the same playing field" based on data availability*"[2]. Given the substantial gaps in CAHPS data, we worry that without modifications, its use will distort SFP selection, especially given it has twice the significance as the other criteria under the proposed algorithm. Challenges with CAHPS' data in the SFP include:

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[1] Industry analysis of data from 2021 Medicare Claims data accessed from Hospice Analytics' INFOMax platform in July 2023, CAHPS and HCI data obtained July 2023, as most recent available data for each, from Care Compare and data.medicare.gov, CLD and Complaints data obtained from QCOR, and number of hospices based upon any hospice CCN with data in 2021 Medicare Claims data, Care Compare, and/or QCOR CLD or Complaints data.

[2] https://www.cms.gov/files/document/2022-technical-expert-panel-tep-and-stakeholder-listening-sessions-hospice-special-focus-program.pdf

- **Lack of data**: Only 49.3% of hospices have publicly available CAHPS® Hospice Survey data[1]. Hospices who do not submit CAHPS® Hospice Survey data, or who are granted an exemption for size or newness, are far less likely to be eligible for the SFP based on the proposed algorithm[1]. For this to be an effective addition to the SFP algorithm, there needs to be significant improvement to the survey return rate and increased provider participation. Similar to HCI, publicly available data shows hospices that do not have CAHPS data have higher rates of CLDs per beneficiary, yet are treated more favorably in the proposed algorithm[1].
- **Algorithm weight**: CMS proposes to have the CAHPS® scores be weighted at two times the other factors, even though the TEP was presented with an algorithm using a weight of 0.25[2]. Overweighting CAHPS data to this degree will unfairly bias hospice providers that report this data and could incentivize hospices to not participate in the CAHPS Hospice Survey.

Transparency Into How SFP Hospices are Selected

In the proposed rule, CMS stated, "5,943 hospices would be eligible for participation in the SFP" and "[t]he hospices selected for the SFP from the 10 percent would be determined by CMS." To ensure transparency, CMS must provide additional information as to how it will decide which of the bottom 10% of hospices will be selected for the SFP. The SFP should not be used as punishment but rather as an educational tool for struggling hospices. We have concerns CMS provided no guidance on how it would utilize its discretion in selecting SFP candidates from the bottom 10% of performers; therefore, we are unable to provide informed comment on its impact on hospice providers.

Graduation and Termination From the SFP

We understand that in order for a hospice in the SFP to graduate out of the program, they must have no CLDs cited or Immediate Jeopardy (IJs) citations for any two six-month SFP surveys, no pending complaint survey triaged at an immediate jeopardy (IJ) or condition level, and must return to substantial compliance with all requirements. The concerns about the lack of scaling the CLD and substantiated complaint data as previously stated above should also be considered in graduation or termination. For example, one CLD in a hospice with an average daily census of 50 signals greater concern about quality of care than one CLD in a hospice with an average daily census of 1000 or greater. Perhaps scaling the number of CLDs by average daily census would be most appropriate. For instance, graduation criteria could require:
0 CLDs if ADC is < 500
1 CLD if ADC is 501 – 2000
2 CLD if ADC is >2000

Publicly Available Data

We understand and support a multifaceted algorithm for selection into the SFP; however, hospices should have a preview of these data and their standing among other hospices across the country. Much of this data is not publicly available, but providers should be aware of how they compare to other hospices. We recommend, as stated above, an improved algorithm and a preview period for hospices.

CMS has previously demonstrated its dedication to improved data-sharing and elevating beneficiary and family voices in the hospice program, including through improved surveyor training, exploration of a web-based CAHPS® survey, and development of the HOPE quality measurement tool. Many of these

initiatives are not fully implemented, but we believe they will be important elements for future refinements to ensure a more equitable and accurate SFP algorithm.

In a letter to HHS Secretary Becerra and CMS Administrator Brooks-LaSure dated September 28, 2021[3], Congressman Jimmy Panetta and Tom Reed, the authors of the HOSPICE Act (legislation passed in 2020 that overhauled the hospice survey process), confirmed that the intention of the legislation was to "*give CMS the tools and resources needed to help poor-performing hospices address deficiencies through education, training, and enforcement remedies*." They note their desire to prioritize education over punishment for poor-performing hospices, and to differentiate poor-performing hospices from truly fraudulent providers, saying, "*We want to help struggling hospices improve and deliver quality care and give CMS the ability to target bad actor organizations with appropriate penalties*." In line with these sentiments from the HOSPICE Act's authors, we worry that certain elements of the proposed SFP algorithm that are based on incomplete data will unfairly punish some higher-performing hospices while ignoring hospices that truly need additional education, training, and resources.

As an industry, we are committed to providing quality, patient- and family-centered care and want the SFP to succeed in helping struggling hospices improve the care they are providing. Unfortunately, as proposed, it would likely identify providers that are not the most appropriate candidates, while missing hospices that actually need additional support to address quality shortcoming. ***The HOSPICE Act, included in the Consolidated Appropriations Act, 2021 [Public Law 116-260] provided the Secretary discretion in the timing of the SFP, and we strongly recommend CMS utilize this discretion to take the time necessary to modify the SFP algorithm, and give hospices a year of preview reports based on this optimized version, which will align with the SFP's goal to educate and improve struggling hospice providers' quality of care.***

We will be submitting additional comments, analysis, and solutions by the August 29 deadline, but thought it was critical to get this information to you in light of the July 13 announcement and the potential that CMS will need to refine how hospices are selected for the SFP. We welcome continued engagement with you and your staff and the opportunity to meet to discuss this further. If you have questions or want to schedule a meeting, your staff should feel free to contact Logan Hoover, Vice President of Policy and Government Relations at NHPCO, Davis Baird Director of Government Affairs at NAHC, Ethan McChesney, Policy Director at NPHI, and Mollie Gurian, Vice President of Home Based and HCBS Policy at LeadingAge.

Sincerely,

National Hospice and Palliative Care Organization
National Association for Home Care and Hospice
National Partnership for Healthcare and Hospice Innovation
LeadingAge

cc David Wright, Director, Quality and Safety Oversight Group

[3] https://hospicenews.com/2021/09/29/congress-members-calls-hhs-to-limit-hospice-payment-suspension-penalties/