Congress of the United States

Washington, DC 20515

October 4, 2023

Shalanda Young
Director
Office of Management and Budget
1650 17th St NW
Washington, DC 20500

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Director Young and Administrator Brooks-LaSure,

In 2020, Congress passed the Helping Our Senior Population in Comfort Environments (HOSPICE) Act as part of the Consolidated Appropriations Act, 2021 (PL. 116-260), which reformed the Medicare Hospice benefit to improve oversight, including creating a Hospice Special Focus Program (SFP). This program, modeled on the program for skilled nursing facilities, was intended to assist poor-performing hospices so they have "the tools and resources …to address deficiencies through education, training and enforcement remedies."[1] We are committed to ensuring that the HOSPICE Act is implemented in a manner that aligns with congressional intent to improve the quality of care delivered to Medicare beneficiaries nearing the end of life. Unfortunately, we believe the design for the SFP proposed in the Centers for Medicare & Medicaid Services' (CMS) Calendar Year 2024 Home Health Prospective Payment System Proposed Rule (CMS-1780-P) would, if finalized, not adequately identify hospices that are truly struggling with performance.[2]

First, the SFP relies on information derived from onsite surveys; yet, according to the most recent CMS data available, nearly 40 percent of hospices had not been surveyed in three years.[3] The Technical Expert Panel (TEP) CMS convened to provide guidance and recommendations on the SFP design explicitly expressed concern with the "limited availability of up-to-date survey data, largely due to the COVID-19 PHE [Public Health Emergency] related backlogs."[4] Additionally, the HOSPICE Act included provisions to improve the consistency of surveyor procedures across the country, and it is unclear whether sufficient time has passed since the promulgation of revised guidance to ensure surveyors have updated, consistent practices.[5] Therefore, we ask CMS to ensure the survey data being integrated into the SFP be up-to-date and that surveyors fully implement the new guidance around consistency.

Second, we are concerned that CMS's proposed approach uses the raw *number* of hospices' condition-level deficiencies (CLD) and substantiated complaint survey data to identify poor performers, which will disproportionately disadvantage larger facilities. For example, under the proposal, CMS would view a hospice with an average daily census (ADC) of 450 with one CLD as identical to a hospice with an ADC of 25 and one CLD. Accounting for relative size is critical to ensuring CMS is accurately comparing like hospices to best identify hospices in most need of focused education and oversight.

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[1] https://www.hospiceactionnetwork.org/wp-content/uploads/Hospice_Act_implementation_to_HHS_CMS.pdf

[2] https://www.federalregister.gov/documents/2023/07/10/2023-14044/medicare-program-calendar-year-cy-2024-home-health-hh-prospective-payment-system-rate-update-hh

[3] https://qcor.cms.gov/report_select.jsp?which=8

[4] https://www.cms.gov/files/document/2022-technical-expert-panel-tep-and-stakeholder-listening-sessions-hospice-special-focus-program.pdf#page=15

[5] https://www.cms.gov/medicare/provider-enrollment-and-certification/surveycertificationgeninfo/policy-and-memos-states/revisions-hospice-appendix-m-state-operations-manual-and-hospice-basic-surveyor-training

Finally, we are concerned that the proposal relies too heavily on the Hospice Care Index (HCI) and the Consumer Assessment of Healthcare Providers and Systems (CAHPS) survey data – both of which have a large proportion of missing publicly reported data. In the HCI, more than 20 percent of hospices do not have a publicly reported score.[6] Likewise, less than half of hospices report CAHPS data for the four measures proposed for the SFP algorithm.[7] CMS's proposal to make CAHPS data the single most influential SFP input is incongruent with the TEP's recommendation to weight the CAHPS measures at 0.25.[4] In fact, 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" We understand that, by weighting CAHPS double relative to other factors makes it *more* likely that hospices that report those data will end up in the SFP pool – creating a perverse incentive for under-performing hospices to refrain from reporting CAHPS. Therefore, we request CMS provide more transparency into why its proposed methodology for CAHPS data differed so drastically from that which the TEP recommended.

We request that CMS, in consultation with the TEP, address the aforementioned limitations, and provide opportunity for stakeholder input on the changes prior to finalizing the SFP. Additionally, CMS should provide all Medicare-certified hospices a preview of how they perform under the updated SFP prior to formally launching the program. This dry run will allow hospices to better understand the SFP itself, as well as helping them to target quality improvement efforts.

The hospice benefit is critical for Medicare beneficiaries, and to strengthen it, we must hold bad actors accountable and incentivize high-quality care. We look forward to working with you to ensure the SFP program is a key part of goal.

Sincerely,

Beth Van Duyne
Member of Congress

Earl Blumenauer
Member of Congress

Brad R. Wenstrup, D.P.M.
Member of Congress

Jimmy Panetta
Member of Congress

[6] https://www.govinfo.gov/content/pkg/FR-2023-07-10/pdf/2023-14044.pdf#page=107
[7] https://www.govinfo.gov/content/pkg/FR-2023-07-10/pdf/2023-14044.pdf#page=108