May 30, 2023

The Honorable Chiquita Brooks-LaSure, MPP
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: Medicare Program; FY 2024 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, Hospice Quality Reporting Program Requirements, and Hospice Certifying Physician Provider Enrollment Requirements

Attention: CMS-1787-P

Dear Administrator Brooks-LaSure,

The American Academy of PAs (AAPA), on behalf of the more than 168,300 PAs (physician assistants/associates) throughout the United States, would like provide comments to the Hospice Wage Index and Payment Rate rule. The rule, among other issues, solicits public comment regarding how to increase patient access to hospice care. It is within this context that we provide the comments below.

In the proposed rule, CMS assesses hospice utilization trends, stating that the number of Medicare beneficiaries utilizing hospice has substantially grown, more than doubling in the past twenty years. However, the Request for Information under the rule also suggests that, despite the benefits of hospice, there may be an underutilization of the program by beneficiaries. CMS seeks input regarding possible barriers to accessing hospice care, as well as associated solutions to eliminate these barriers.

While AAPA does not claim that Medicare's hospice policies pertaining to PAs are the primary reason for the underutilization of hospice, we believe that greater utilization of PAs has the potential to reduce care barriers and move toward ameliorating the problem of eligible beneficiaries not appropriately accessing hospice services. Proper utilization of PAs will help ensure that hospice organizations are adequately staffed with health professionals who can provide a broad array of services, increasing capacity and bolstering the benefit to patients. AAPA suggests four ways in which CMS can support greater utilization of PAs to increase access to hospice care.

First, CMS should seek to make beneficiaries more comfortable in electing a hospice benefit by promoting the concept that a patient entering hospice should continue to have the involvement of a health professional with whom they've previously built a relationship. Currently, Medicare policy authorizes PAs to act as attending physicians for Medicare hospice patients. As such, a patient who receives their care from a PA prior to their terminal illness, may continue to have the health professional with whom they've built a relationship involved in their care decisions after hospice election. However, while Medicare authorizes PAs to be attending physicians, CMS also defers to state law/regulations and facility policies as to whether PAs are authorized to practice in this role. If language prohibiting PAs from acting as hospice attending physicians exists in state law/regulations or facility policies, PAs in the state would not be able to do so until the restrictive language is removed. AAPA requests that CMS communicate the myriad benefits of authorizing PAs to serve as attending physicians, and in doing so encourage any states or facilities with restrictive policies to authorize PAs to be attending physicians under Medicare hospice.

- **AAPA recommendation: Encourage states that prohibit PAs from serving as attending physicians to update their policies to be in alignment with Medicare policy.**

Second, CMS should bolster the amount of care and attention available to those beneficiaries who elect hospice by removing arbitrary restrictions on PAs who work in hospice settings from providing needed care. For example, CMS restricts PAs who work for a hospice, from ordering medications for patients. In addition, CMS has a policy whereby if a beneficiary does not have a physician, NP, or PA who provided primary care to them prior to, or at the time of, terminal illness, the beneficiary is given the choice of being served by either a physician or NP who works for the hospice as an attending physician. This policy unnecessarily limits the number of PAs that can fill the important role of an attending physician under specific circumstances. These restrictions are within the purview of CMS to directly address by regulatory means or modification of agency policy.

AAPA recommendations:

- **Modify 42 CFR § 418.106(b)(1)(iii) to authorize PAs employed by the hospice to order medications for hospice patients.**
- **Modify the Medicare Benefit Policy Manual, Chapter 9, Section 40.1.3.3 to authorize PAs employed by the hospice to serve in the role of a patient's attending physician if an attending physician was not previously selected by the patient.**

Third, CMS should work to remove direct barriers to patient certification/recertification and admission to a hospice. Currently, PAs and NPs are unable to certify or recertify a patient's terminal illness, which is necessary for patient admission to a hospice. In addition, PAs are not authorized to conduct a face-to-face encounter prior to recertification after a patient has been in hospice for 180 days. These prohibitions are a direct barrier to patients gaining access to needed hospice care. AAPA recommends that CMS work with Congress to remove these legislative restrictions.

AAPA recommendations:

- **Work with Congress to modify 42 U.S.C. 1395f(a)(7)(A) to authorize PAs to certify and re-certify terminal illness.**
- **Work with Congress to modify 42 U.S.C. 1395f(a)(7)(D)(il) to authorize PAs to perform the face-to-face encounter prior to recertification after a patient has been under the hospice benefit for 180 days.**

Fourth, CMS should support an expansion of the capacity of hospices to see patients by ensuring that the finite number of physicians who work in hospices are not the only option to participate as members of interdisciplinary groups, when qualified health professionals like PAs may be available. Currently, an interdisciplinary group is required to have at least one participating physician. PAs are unable to be utilized in place of physicians as the required member, potentially capping the number of patients that can be cared for by a hospice. CMS should support the inclusion of PAs as members of interdisciplinary groups, expanding with it the number of possible interdisciplinary groups that could care for hospice patients.

- **AAPA recommendation: Work with Congress to modify 42 U.S.C. 1395x(dd)(2)(B)(i)(I) to authorize PAs to participate in the same role on an interdisciplinary group as physicians.**

Thank you for the opportunity to provide comments regarding Medicare Hospice services. AAPA welcomes further discussion with CMS regarding these issues. For any questions you may have please do not hesitate to contact me at michael@aapa.org.

Sincerely,

Michael L. Powe, Vice President
Reimbursement & Professional Advocacy