May 28, 2024

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 2025 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, and Hospice Quality Reporting Program Requirements

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 to provide comments on the 2025 Hospice Wage Index proposed rule. In the rule, the Centers for Medicare & Medicaid Services (CMS) continues its efforts to enhance access to, and provide further clarity regarding, the hospice program. However, there are additional policy updates, many within the purview of CMS, which would further bolster the agency's stated goals for the program. AAPA believes these opportunities for improvement in hospice policy that would bolster beneficiary access to needed care merit further consideration by the agency.

Enhancing Access to Hospice Services

Within the Hospice Wage Index proposed rule, CMS has included a request for information (RFI) regarding the potential for the hospice program to account for higher-cost palliative care treatments. Contained in this RFI is a justification for the agency's examination of this subject that cites concerns regarding beneficiary access to needed care. Specifically, the agency notes:

> "CMS continually works to ensure access to quality hospice care for all eligible Medicare beneficiaries by establishing, refining, readapting, and reinforcing policies to improve the value of care at the end of life for these beneficiaries. That is, we seek to strengthen the notion that in order to provide the highest level of care for hospice beneficiaries, we must provide ongoing focus to those services that enforce CMS'

definitions of hospice and palliative care and eliminate any barriers to accessing hospice care."

The agency continues by recognizing that there are ongoing barriers to accessing care that result in hospice services being an underutilized benefit. Underutilization of hospice can lead to a prolonged patient usage of expensive and ineffective care. The causes of postponement in electing hospice care are numerous and may include the difficulty of a provider concluding a patient's prognosis is terminal and the difficulty with people confronting and accepting mortality. With so many factors delaying the use of hospice care, as well as creating access delays for those undergoing hospice care, unnecessary policy barriers create additional challenges.

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 sufficiently accessing hospice services. Proper utilization of PAs will help ensure that hospice organizations are appropriately staffed with health professionals who can provide a broad array of services, increasing capacity and bolstering the benefit to patients. AAPA suggests two opportunities for CMS to further advance the goal of increased access to hospice care, as stated in the rule's RFI.

<u>Remove Restrictions on Health Professionals Providing Services They Are Qualified to Perform</u>

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, nurse practitioner (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. This is not a question of competence, as CMS policy indicates that when not employed by a hospice, PAs are authorized to serve in the role of a hospice attending physician.

These restrictions are within the purview of CMS to directly address by regulatory means or modification of agency policy. Within the rule, the agency notes, "CMS has broad statutory authority to establish health and safety standards for most Medicare- and Medicaid-participating provider and supplier types." As such, the agency has the authority to remove non-statutory restrictions that inhibit patient access but have no basis in safety.

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.**

Encourage the Removal of State or Facility-Level Restrictions on Accessing Hospice Services

For beneficiaries who are considering electing hospice care, CMS should seek to provide reassurance that the transition from curative to hospice services will be as comforting and reassuring as possible. Specifically, CMS should promote the concept that a patient entering hospice may continue to have the involvement of a health professional with whom they've previously built a relationship and trust. 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 or facility in question would not be able to do so until the restrictive language is removed. AAPA requests that CMS communicate the numerous 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.

CMS Clarifications on Certifying/Recertifying Terminal Illness and Admitting to a Hospice

Elsewhere in the Hospice Wage Index proposed rule, CMS issues clarifying language regarding who may provide initial certification and recertification for a terminal illness prior to a beneficiary's receipt of hospice services, as well as who is authorized to admit to a hospice. While not a policy change, AAPA appreciates CMS seeking to clarify ambiguous and seemingly contradictory language, and doing so in a manner that is more expansive regarding who may provide the necessary certification and admission services. Such efforts may expand the number of beneficiaries who are able to gain access to hospice care and allow for beneficiary access to services in a timelier manner.

However, AAPA believes that the certification and admission process would further benefit from expansion to other non-MD/DO health professionals qualified to make these determinations, such as PAs and NPs. Currently, PAs and NPs are unable to certify/recertify a patient's terminal illness or admit to a hospital. 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. If such prohibitions are changed, it would be in alignment with CMS's clarifications within the proposed rule, assuring that health professionals capable of providing such services are authorized to do so.

AAPA recognizes that these restrictions are statutory in nature and would require an act of Congress to rectify. However, we believe that support from CMS regarding such statutory changes would be effective in resulting in their consideration and passage.

AAPA recommendations:

- **Work with Congress to modify 42 U.S.C. 1395f(a)(7)(A) to authorize PAs and NPs to certify and recertify 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.**

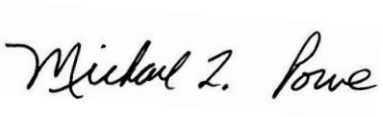
Health Professional Roles on a Hospice Interdisciplinary Group

A similar statutory provision that restricts a needed hospice role to be filled only by physicians is the status of a physician member of an Interdisciplinary Group (IDG). Currently, an IDG is required to have at least one participating physician. As there is a finite number of physicians who work within hospices, requiring their presence on every IDG when there are similar qualified health professionals like PAs available potentially reduces the capacity of hospices to care for patients. CMS should support the inclusion of PAs as members of IDGs in the position currently allotted solely for physicians, 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 the 2025 Hospice Wage Index proposed rule. AAPA welcomes further discussion with CMS regarding these important 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 and Professional Advocacy