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Aug. 26, 2021

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
Hubert H. Humphrey Building
200 Independence Ave., SW
Washington, D.C. 20201

RE: ***Medicare and Medicaid Programs; CY 2022 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model Requirements and Proposed Model Expansion; Home Health Quality Reporting Requirements; Home Infusion Therapy Services Requirements; Survey and Enforcement Requirements for Hospice Programs; Medicare Provider Enrollment Requirements; Inpatient Rehabilitation Facility Quality Reporting Program Requirements; and Long-Term Care Hospital Quality Reporting Program Requirements***

Dear Administrator Brooks-LaSure:

On behalf of the New Jersey Hospital Association (NJHA) and its over 400 hospital, health system and post-acute members – including most of NJ's certified home health agencies -- thank you for the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) 2022 Home Health Prospective Payment System Rate Update proposed rule (CMS-1747-P). In response to CMS' request for comment on the proposed rule, we wish to express our grave concerns with the agency's proposal to use the FY 2022 pre-floor, pre-reclassified hospital wage index with no five percent cap on decreases as the CY 2022 wage adjustment to the labor portion of the HH PPS rates.

In its FY and CY 2021 final payment rules – including the CY 2021 Home Health Prospective Payment System final rule (CMS-1730-F), the FY 2021 Hospital Inpatient Prospective Payment System final rule (CMS-1735-F), the FY 2021 Inpatient Rehabilitation Facility (IRF) Prospective Payment System final rule (CMS-1729-F), and the FY 2021 Skilled Nursing Facility (SNF) Prospective Payment System final rule (CMS-1737-F) – CMS finalized a proposal that used the Office of Management and Budget's most recent core-based statistical areas (CBSA) delineations (OMB Bulletin No. 18-04) as the basis for determining area wage index adjustments for health care providers.

Under the FY 2021 final rules, four New Jersey counties – Middlesex, Monmouth, Ocean, and Somerset – shifted from their previous CBSAs to a newly-created CBSA for FY 2021. Relying on what we believe is inaccurate and out-of-date employment and commuting data, CMS adopted what the agency described as "significant rearrangement in the constituent counties among the

New York City Area Metropolitan Divisions" – rearrangements that the agency itself noted will result in a nearly 17 percent decrease in the wage index for the impacted providers.

While CMS did provide transitional relief in FY 2021 to affected providers in the form of a five percent cap on any decrease in a facility's wage index from FY 2020 – a policy that was recently extended for acute care hospitals for an additional year as part of the FY 2022 IPPS Final Rule (CMS-1752-F) – this additional transitional relief was not applied to other provider payment systems and was not included in the CY 2022 Home Health PPS proposed rule.

The new CBSA delineations have already proven particularly harmful to many of New Jersey's most vulnerable hospitals, skilled nursing facilities, and home health and hospice care providers. Without a transition policy in place, the newly created CBSA will result in Medicare payment cuts totaling approximately $15-20 million per year for home health agency providers. Under the FY 2022 hospice payment rule, New Jersey hospice care providers are projected to experience several million dollars in cuts annually.

While these cuts would be disastrous at the best of times, the timing of this proposal is particularly deleterious for home health agencies. The COVID-19 pandemic continues to severely disrupt the care delivery system, causing significant financial pressures throughout the industry. A recent survey by the National Association for Home Care & Hospice found that 45.8 percent of home health agencies in the New York/New Jersey COVID-19 "hot spot" experienced revenue reductions greater than 15 percent and that 37.6 percent of those providers reported revenue reductions of greater than 20 percent.[1] This is in addition to significant, COVID-19 related cost increases that far exceed the financial supports that have been provided to home health agencies through the CARES Act Provider Relief Fund and other relief mechanisms.

A significant portion of New Jersey's home health agencies are not-for-profit; for them this reduction could be particularly disastrous. Unlike for-profit entities, they do not have the access to capital markets and commercial lenders to make up this shortfall, and even if they did, they would never be able to service such a debt load. They already depend heavily on charitable donations to support many programs and would never be able to make up these projected losses through a charitable giving campaign.

Revenue reductions resulting from the reduction in volume caused by the pandemic have already led to furloughs of non-essential workers. Some have had to implement across-the board salary reductions and even changes in some employee benefits. To protect our home health staff as best we could, agencies implemented COVID-19 protocols that included two-person safety teams, heightened safety training, and disinfecting washes prior to and after each visit – all without any additional financial support for the visits made. In some cases, agencies were foreclosed from any of the Small Business Association (SBA) relief because of size, even though it was their size that

[1] National Association for Home Care & Hospice (2020). National study shows home health care is in a fragile state. Available at: https://www.nahc.org/wp-content/uploads/2020/03/NATIONAL-SURVEY-SHOWS-HOME-HEALTH-CARE-ON-THE-FRONTLINES-OF-COVID-19-AND-CONTINUES-TO-BE-IN-A-FRAGILE-FINANCIAL-STATE.pdf

allowed them to implement these safety protocols and continue to send nurses and other caregivers into the field. After weathering that storm, agencies are now facing significant staffing shortages, as those same nurses, therapists, and other providers agencies relied on to get through that time are exhausted. They are burned out, afraid, and have little more left to give. They balk at reentering a home health industry where they have been asked to make sacrifice after sacrifice – with little to no reward. A cut of this magnitude would severely impact agencies' ability to pay competitive wages to retain current staff or recruit new providers, especially when-as pointed out above-providers could travel a very short distance to the New York Metro CBSA, with its 25% higher wage index. Without adequate staff, agencies would not be able to accept referrals for those frail elderly and vulnerable patients, at a time when hospitals are again beginning to face pandemic-related overcrowding.

Since the beginning of the pandemic, the Garden State has relied on home health agencies to care for patients recovering from COVID-19 so that hospital capacity could be available for severely ill patients. This also helped make more efficient use of PPE and to minimize further spread of the infection. However, though home health is an essential aspect of our health care system, home health providers are facing unprecedented financial hardship, and unparalleled challenges in attracting and retaining nurses and home health aides. This is true even with New Jersey's minimum wage requirements that exceed the national average. Home health agencies in New Jersey simply cannot afford additional cuts to reimbursement when they are competing for employees, required to implement even more advanced infection control processes, responding to a state staff vaccination/testing mandate and facing a surge in COVID-19 cases resulting from the Delta variant and the prospect of a challenging influenza season ahead.

Without a transition policy in place to mitigate the effects of the newly created CBSA, many of these organizations will face the prospect of being unable to continue caring for New Jersey's most vulnerable patients. Older adults who rely upon home health agency services to help them gain and maintain independence at home would then be faced with having to enter a nursing home. Beyond the beneficiary impact, the loss of home health agencies services would be incredibly disruptive to hospitals, specialty hospitals, skilled nursing facilities, physician practices, ambulatory surgery centers and others who rely upon their home health agency partners to coordinate care in the community. Therefore, on behalf of New Jersey's home health agencies currently facing increased costs, reduced revenue, and significant reimbursement cuts amid the ongoing COVID-19 crisis, ***NJHA strongly urges CMS to adopt a transition policy for home health providers that mirrors the 5 percent cap on AWI reductions included in the FY 2022 Hospital IPPS Final Rule (CMS-1752-F).***

NJHA has several other concerns related to the proposed rule which are detailed by both the American Hospital Association and the National Association of Home Care and Hospice; NJHA is a member of both organizations. These concerns include:

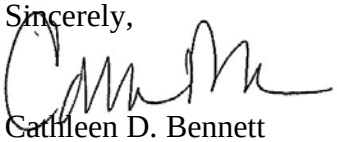
- Recalibration of case mix weights – NJHA recommends that CMS hold off on recalibration of case mix weights under PDGM because 2020 data will reflect the disruption caused by COVID-19 to clinical practice, including the volume of telehealth visits.

- Expansion of value-based payment program – Overall, NJHA supports Medicare's transition to value-based payments. However, the pandemic continues to impact agencies' ability to institute operational and other changes necessary to prepare for VBP. Success is related to appropriate preparation. Therefore, we recommend that CMS provide greater lead time before the go-live date.
- Hospice survey reforms – Given our experience with surveys throughout the healthcare delivery system, NJHA strongly recommends that CMS puts significant resources and expertise into education, training, guidance and planning for both surveyors and hospice providers. It is essential not to repeat the problems other health care providers experience survey process inconsistency within states and across states.

We support the detailed recommendations that both NAHC and the AHA have included in their comment letters.

Thank you for the opportunity to provide comments on this proposed rule. NJHA looks forward to working with CMS to address the significant threat to the financial viability of home health agencies, and all post-acute providers in New Jersey, that is posed by the lack of a cap on the wage index decrease for CY22.

Sincerely,



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