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Centers for Medicare and Medicaid Services
Department of Health & Human Services
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RE: 33466-P

RIN 0938-AT23

Medicare and Medicaid Programs; Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction

To whom it may concern:

The Hospice and Palliative Care Association of New York State (HPCANYS) appreciates the opportunity to comment on the Centers for Medicare and Medicaid Services (CMS') proposed Regulatory Provisions to Promote Efficiency, Transparency and Burden Reduction.

We are limiting our comments to the hospice section of the Proposed Rule. We will address our comments in the order that they appear in the Proposed Rule.

Hospice Section

Hospice Aide and Homemaker Services (§ 418.76) Allowing hospices to defer to State licensure requirements for their aides regardless of the State content or format, and would allow states to set forth training and competency requirements that meet the needs of their populations. This change will streamline the hiring process for most hospices.

HPCANYS supports this requirement that would defer to state licensure requirements. Although NY has very similar if not identical requirements as CMS, it makes sense to rely on the state regulations.

Specialty medication staff 42 CFR 418.106(a)(1), related to having on the hospice staff, an individual with specialty knowledge of hospice medications, is no longer necessary for various reasons. Therefore, we propose to remove these requirements.

HPCANYS supports the removal of 42 CFR 418.106(a)(1). This requirement is no longer necessary. Hospices work well with pharmacies, either local or hospice specific pharmacies, and have developed expertise in medication management with their physicians, nurse practitioners and nurses. We agree with CMS's analysis that, since 2005, hospices have evolved to have expertise in medication management, that the number of certified hospice nurses and physicians has increased dramatically, and that their relationships with pharmacists has improved.

Rescinding the requirement to provide families a paper copy of drug policy. Replacing a requirement that hospices provide a physical paper copy of policies and procedures with a requirement that hospices provide information regarding the use, storage and disposal of controlled drugs to the patient or patient representative, and family, which can be developed in a manner that speaks to the perspectives and information needs of patients and families. This information would be provided in a more user-friendly manner, as decided by each hospice, which we believe can improve comprehension and maximize the effectiveness of the education effort.

Good stewardship of opioids and other drugs is vital and hospice programs take this responsibility very seriously. HPCANYS supports providing information to the patient and their family in a user friendly manner instead of issuing copies of their policies. In fact, this will be more effective for the consumers to read and understand and then implement. Unfortunately, this conflicts with the new sweeping opioid law signed into effect on 10/24/18 by President Trump in which the policies are required to be given to the patient/ family. HPCANYS would suggest that CMS works with the DEA when they promulgate the regulation on this new law and require the information developed in a manner that speaks to the perspectives and information needs of patients and families.

Training for staff of nursing homes/facilities and ICFs. Assuring requirements for hospices that provide hospice care to residents of a skilled nursing facility/nursing facility or Intermediate Care Facilities for Individuals with Intellectual Disabilities to move the requirement for facility staff orientation to the standard related to the written agreement established between hospices and facilities. We believe this would ensure that both entities negotiate the mechanism and schedule for assuring orientation of facility staff, encourage collaboration between both entities, and avoid duplication of efforts with other hospices that are orienting the same facility staff.

HPCANYS does not support this proposal. Since education of the facility is part of the current contracts that hospices must have with facilities prior to initiating care, this regulation change

would actually create more work for hospices because they would have to create a new contract and then have all of the facilities sign them. This would cost money because the hospices would have to seek legal counsel to change their contracts. Then the lengthy process of the facilities, especially if they are from a larger corporate chain, would have to have their legal counsels review the contracts as well. HPCANYS sees this change as more burdensome than the current process. In fact, many NY hospice programs recently updated their contracts with facilities and this would require them to do it over again.

Further HPCANYS does not agree with CMS's observation that this requirement may cause duplication when more than one hospice is contracted with a facility being a problem. In fact, the more exposure that the facility staff with the hospice philosophy and how care is provided to hospice patients will benefit the patient and the facility staff.

Annual Emergency Preparedness Testing. We believe that conducting two testing exercises per year is overly burdensome as these providers do not provide the same level of acuity or inpatient services for their patients. Therefore, we propose to require that providers of outpatient services conduct only one testing exercise per year. Furthermore, we propose to require that these providers participate in either a community-based full-scale exercise (if available) or conduct an individual facility-based functional exercise every other year.

HPCANYS agrees with the removal of the 2nd annual emergency preparedness test per year for community based hospice programs (without inpatient facilities).

HPCANYS proposes further suggestions for future regulatory burden reduction:

1. Face to Face Encounter in the 3rd (or beyond) benefit period: A hospice patient entering into the 3rd or subsequent benefit periods needs a Face to Face encounter with a physician or nurse practitioner. This visit is administrative and non-billable in nature. When the hospice misses the deadline to provide this visit in advance or on the first day of the new benefit period, the hospice has been instructed to discharge the patient and readmit. We can argue the value of the face to face visits, but *what we are asking for your consideration on is the use of code 77 – delay in certification to be applicable to a late face to face visit that does not meet the emergency exemptions.* It is not only burdensome to the hospice program to discharge and admit the patient but it is very confusing and burdensome to the patient and family to go through this process.
2. Sequential billing – CMS should explore options to eliminate sequential billing for hospice. The sequential billing requirement causes significant problems for hospices. The implementation of the Notice of Election (NOE)/Notice of Termination or Revocation (NOTR) process has complicated sequential billing issues, particularly when the patient revokes or is discharged, and especially when a patient changes hospice providers. Since bills must be submitted sequentially, if the first hospice has not submitted a NOTR or final

claim, the second hospice is unable to bill. Typically, this causes the second hospice's NOE to be submitted late and in order to submit claims and receive reimbursement the second hospice must have an exception request approved, which is not routinely granted. If there is any change in the hospice election- for example, when the patient revokes, chooses another hospice or is discharged from the hospice for no longer qualifying as terminal- sequential billing issues often require significant time and administrative effort to straighten out. In the meantime, the hospice is expected to provide services without reimbursement.

HPCANYS, as always, stands ready to serve as a resource to CMS as hospice issues are addressed and looks forward to continuing improvement of the hospice benefit to provide quality care to both patients and families. Thank you for your consideration.

Sincerely,

Carla Braveman
President & CEO