

# Congress of the United States

Washington, DC 20515

September 18, 2024

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 Administrator Brooks-LaSure,

We write to express our continued concerns regarding implementation of the Hospice Special Focus Program (SFP), which was enacted as part of the Helping Our Senior Population in Comfort Environments (HOSPICE) Act in 2020, as part of the *Consolidated Appropriations Act, 2021* (PL. 116-260). As you know, the purpose of the SFP is to identify poor-performing hospices and conduct additional oversight to support improvement. The Centers for Medicare & Medicaid Services (CMS) indicated that the first cohort of SFP participants, for the first quarter of January 2025, will be comprised of the bottom one percent of a list of the bottom 10 percent of poor-performing hospices, likely 500-700 hospice programs.<sup>1</sup> While we believe in the concept of the SFP as a mechanism to support quality improvement, we remain concerned that the methodology for selecting participants will capture hospices that should not actually be in the SFP, risking reputational harm to hospices that have spent years working within their communities to become trusted partners for end-of-life care. Therefore, we write to request that you withhold public dissemination of this 10 percent list in the first two years of the program, while the algorithm is being tested and data abnormalities are addressed.

In October, we expressed our concerns that the SFP, as proposed in the Calendar Year (CY) 2024 Home Health Prospective Payment System (PPS) Proposed Rule (CMS-1780-P), would “not adequately identify hospices that are truly struggling with performance.”<sup>2</sup> In spite of our concerns and concerns of the hospice community, CMS finalized the proposed SFP algorithm without modifications.

We recognize that the algorithm CMS has designed is limited by the currently available quality and survey data; yet, we remain concerned that abnormalities in the data—particularly related to missing values—and lagging survey data may result in a program that does not accurately identify the true poor performers. More specifically, we are concerned about the recent Government Accountability Office’s (GAO) report that as of May 2023, 10 percent of hospices were overdue for surveys—with large inconsistencies across states—and over a quarter of those hospices have not been surveyed in at least five years. Equally problematic, a large proportion of hospices do not report Consumer Assessment of Healthcare Providers & Systems (CAHPS) data, which inherently rewards providers for not reporting, particularly given these data are being double-counted.<sup>3, 4</sup>

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<sup>1</sup> See Centers for Medicare & Medicaid Services, CMS Hospice Forum Call (Nov. 14, 2023), <https://www.cms.gov/files/document/cms-hospice-forum-transcript-november-2023.pdf>.

<sup>2</sup> Letter from Rep. Beth Van Duyne, Rep. Earl Blumenauer, Rep. Brad R. Wenstrup, and Rep. Jimmy Panetta, to Dir. Shalanda Young, Off. of Mgmt. & Budget, and Administrator Chiquita Brooks-LaSure, Centers for Medicare & Medicaid Services (Oct. 4, 2023).

<sup>3</sup> U.S. Gov’t Accountability Off., GAO-24-106442, Medicare Hospice: CMS Needs to Fully Implement Statutory Provisions and Prioritize Certain Overdue Surveys (2024), <https://www.gao.gov/products/gao-24-106442>.

<sup>4</sup> See 88 Fed. Reg. 77,676, 77,805 (Nov. 13, 2023).

Given these significant data issues, we believe some hospices will be incorrectly included on the 10 percent list initially, risking grave reputational harm. Placement on the SFP list could impact a hospice's ability to recruit and retain staff, as well as jeopardize relationships with referral sources and the important work hospices do to build community relationships as trusted partners for end-of-life care. These risks could be avoided if CMS withholds publication of the 10 percent list for the first two years of the program while the algorithm is piloted and issues with data are resolved. In fact, this approach has precedence: The Special Focus Facility Program (SFF), an analogous program for nursing homes that the SFP was modeled after, did not have its candidate list published publicly at the outset of the program. Additionally, we ask that you continue to work with stakeholders to improve the data and algorithm for the SFP and create a process, such as private preview reports and opportunities for hospices to contest their scores, that will foster more transparency and communication about the scores.

Hospice is a critical benefit for Medicare beneficiaries at one of the most vulnerable times in their lives, and patients must receive high-quality care. SFP will be a key tool in that goal, and we look forward to working with you to ensure that it is implemented appropriately.

Sincerely,



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Beth Van Duyne  
Member of Congress



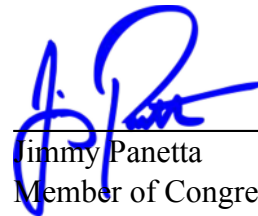
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Earl Blumenauer  
Member of Congress



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



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Jimmy Panetta  
Member of Congress