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August 28, 2023

Chiquita Brooks-LaSure, Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20101

RE: **CMS-1780-P**
Medicare Program; Calendar Year (CY) 2024 Home Health (HH) Prospective Payment System Rate Update; HH Quality Reporting Program Requirements; HH Value-Based Purchasing Expanded Model Requirements; Home Intravenous Immune Globulin Items and Services; Hospice Informal Dispute Resolution and Special Focus Program Requirements, Certain Requirements for Durable Medical Equipment Prosthetics and Orthotics Supplies; and Provider and Supplier Enrollment Requirements

Dear Administrator Brooks-LaSure:

The National Hospice and Palliative Care Organization (NHPCO) appreciates the opportunity to submit comments on the provisions in the **CY 2024 Home Health Prospective Payment System Rate Update** proposed rule (CMS-1780-P), published in the Federal Register on July 10, 2023. We look forward to our strong, continued collaboration with CMS regarding the full range of issues impacting the hospice and palliative care provider community and the patients and families we serve.

NHPCO is the nation's largest membership organization for hospice providers and professionals who care for people affected by serious and life-limiting illness. NHPCO members provide care in more than 4,000 hospice and palliative care locations and care for over two-thirds of the Medicare beneficiaries served by hospice. In addition, hospice and palliative care members employ thousands of professionals and volunteers.

We have focused our comments on the potential impact of these proposals on hospice providers serving patients with serious and life-limiting illness and their families. NHPCO held a Listening Session on the proposed rule in early August 2023 and gathered comments from hospice providers throughout the country – large and small, for profit and not for profit, urban and rural hospices, as well as NHPCO committee members with vast experience in hospice quality and regulatory compliance.

Hospice Informal Dispute Resolution (IDR)

NHPCO supports the CMS proposal to add hospice providers to the IDR process. This will give hospices the option to resolve disputes about condition-level deficiencies identified on the CMS-2567, Statement of Deficiencies and Plan of Correction, during the recertification process. NHPCO wants to ensure that participation in the IDR process and any changes that result in a revised CMS-2567 are

tracked by CMS. This will allow hospices and other entities to have up to date information on the use of the IDR process and the final disposition of the CMS-2567.

In the proposed rule, the timeframes are not clear for the steps in the IDR process. It would be helpful for providers to have a better indication of what the timeline is and when decisions about resolution could be expected.

NHPCO Recommendation

- NHPCO recommends that CMS publish guidance on timeframes for the steps in the IDR process for hospices. In addition, NHPCO recommends that CMS develop a process to track providers utilizing the IDR, their status, and final disposition of the IDR request, including ensuring that the revised CMS-2567 is recorded with the condition-level deficiency changes, if any.

Hospice Special Focus Program (SFP)

The Hospice Special Focus Program was included in the HOSPICE Act, which was incorporated into the Consolidated Appropriations Act of 2021 (CAA21). An algorithm was proposed by CMS to identify poor performing hospices and help hospices improve through more frequent surveys and technical assistance, while also including enforcement remedies and fines as appropriate.[1] The emphasis is on the quality of hospice care and is focused on eleven quality-of-care Conditions of Participation, identified by CMS as having the most impact on the quality of hospice care. NHPCO was honored to have a representative on the TEP for the hospice Special Focus Program participating in the discussion and recommendations.

1. Survey reports with Quality-of-Care Condition-Level Deficiencies (CLDs)

Scaling of quality-of-care CLDs and substantiated complaints: NHPCO believes that the only way to fairly compare condition-level deficiencies and substantiated complaints is to use a calculation of the number of CLDs and substantiated complaints per 100 beneficiaries, so that no matter what the size of the hospice, CLDs and substantiated complaints can be compared fairly. The score methodology was developed by CMS and Abt Associates and presented to the TEP for review. The TEP Summary Report describes the scaling methodology of CLDs/Substantiated Complaints per 100 beneficiaries served below:

> *Both Quality of Care CLDs and substantiated complaints were scaled as CLDs/Substantiated Complaints per 100 beneficiaries served, except for hospices in the smallest size quartile (less than 57 beneficiaries, in this instance) for which the raw number was used. This was to ensure that larger hospices were not at a disadvantage compared to smaller hospices.*[2]

This component of the score methodology, approved by the TEP and detailed in the TEP Summary Report, was not included in the proposed rule. This type of methodology is standard in many other areas of quality improvement, such as fall-reduction programs which look at regular monitoring of outcomes (such as number of falls per 1,000 occupied bed days), or at least one or two care processes (e.g., assessment of fall risk factors and actions taken to reduce fall risk), or key aspects of the infrastructure to support best practices (e.g., checking for interdisciplinary participation in

[1] CY 2022 Home Health rule https://www.govinfo.gov/content/pkg/FR-2021-11-09/pdf/2021-23993.pdf
[2] 2022 Technical Expert Panel and Stakeholder Listening Sessions: Hospice Special Focus Program Summary Report (cms.gov)

Implementation Teams). There are many other examples. NHPCO believes that this scaling to compare hospices of different sizes equally is foundational to the algorithm and must be included in the calculation of quality-of-care CLDs and substantiated complaints.

NHPCO Recommendation

- We strongly encourage CMS to restore scaling of the quality-of-care CLDs and substantiated complaints in the scoring methodology for the SFP algorithm in the final rule. This includes the number of CLDs and substantiated complaints per 100 beneficiaries. This score methodology designed by CMS and the SFP contractor, and presented to and supported by the TEP, is integral to the CLD and substantiated complaint methodology so that no hospice is disadvantaged in the calculation due to size.

Overdue surveys: The CMS QCOR website has identified hospices whose 36-month survey is overdue in the *Hospice Overdue Recertification Surveys Report.* The QCOR report, if accurate and up to date, finds that 2,463 hospices (35.1%) of the 7,152 active Medicare certified hospices reported in QCOR[3], have overdue recertification surveys – that means that a hospice recertification survey has not been conducted in the last 36 months. Providers have commented that they are 14 months late for their survey, 24 months late for a survey or have not been surveyed for an even longer time period. With quality-of-care CLDs and substantiated complaints as core components of the SFP algorithm, it is concerning that 35% of hospices are outside the required 36 month survey timeframe and no data on their survey findings would be reflected in the algorithm calculation.

In addition, we raise a concern about the number of overdue surveys currently in the *Hospice Overdue Recertification Surveys Report.* Even if that number is corrected and up to date, NHPCO has a significant issue about how additional surveys, conducted every six months for hospices in the SFP, will be managed by SAs who are already behind in conducting hospice recertification surveys and complaint surveys.

NHPCO Recommendation

- NHPCO strongly encourages CMS to continue the data migration of the QCOR survey data for hospices so that accurate data is available to judge the number and percentage of hospices with a survey that is overdue. If the number continues to be significant, CMS should consider the appropriate steps to address the formula in the algorithm, particularly if there is no available data for a hospice on CLDs and substantiated complaints. This could include a delay in implementation of the hospice SFP until more data is publicly available.

QCOR survey deficiency data not yet updated: The only survey deficiency data available to all hospices is the CMS QCOR website data. However, the website has announced that "due to systems migration, hospice provider and survey information will only be accurate and complete through September 29. 2022." CMS reports that there were 7,112 Medicare certified hospices[4] in 2022 and only 1,278 hospice providers with survey results posted. As you are aware, no survey findings have been reported so far in FY 2023.

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[3] QCOR link https://qcor.cms.gov/report_select.jsp?which=8 QCOR Hospice Home Page https://qcor.cms.gov/report_select.jsp?which=8

[4] QCOR Active Provider and Supplier Counts Report https://qcor.cms.gov/new_count.jsp?which=8&report=new_count.jsp

Hospices, as well as state and national hospice organizations are depending on accurate and up to date information, which is now almost a year out of date. The volume of condition-level deficiencies, the number of condition-level deficiencies that are included, the number and percentage of hospices with an overdue survey are all topics that will be assessed. Providers, as well as state and national organizations will also use survey information by state and region to analyze condition-level deficiencies and their prevalence.

NHPCO Recommendations

- NHPCO recommends that the data migration issues impacting QCOR be resolved before the implementation of the hospice SFP so that providers and others can depend on the accuracy and timely posting of CLD and substantiated complaint data.

- NHPCO requests that CMS provide a status report in the final rule about updates to the QCOR data and website.

- NHPCO requests that CMS develop a separate "*Quality of Care Condition Level Deficiencies Report,"* since the subset of quality-of-care CLDs are central to the algorithm score. This would provide much needed detail on the frequency of quality-of-care CLDs by CMS location and by state.

Inconsistent surveys: Many providers have had varied experiences with surveyors, particularly when the surveyor is from the State Agency (SA). Hospice providers are still experiencing the implementation of the most recent update of the CMS State Operations Manual, Appendix M – Hospice in January of 2023. Surveyor training is still in process.

NHPCO Recommendation

- NHPCO believes that more time is needed for updates to training from Appendix M to be completed and surveyors are comfortable with the changes. This will improve survey consistency.

Survey staff shortages at State Agencies: Hospices providers and state hospice organizations report that there are multiple surveyor openings in SAs, causing delays both in standard surveys and complaint surveys. The implementation of the hospice SFP will also require additional surveys for those enrolled. We are concerned that there may be a backlog in surveys for SFP, in addition to the ones that already exist for recertification and complaint surveys.

The HOSPICE Act included $10,000,000 a year from the Federal Hospital Insurance Trust Fund to the CMS Program Management Account to increase surveyor aptitude and ensure all hospices were surveyed not less frequently than once every 36 months. The Special Focus Program is predicated on improvements to the survey process, and we believe more time is needed for these improvements to happen.

NHPCO Recommendations

- NHPCO recommends that CMS address inconsistent surveys and evaluate the seriousness of staffing shortages before the use of quality-of-care CLDs and substantiated complaints are incorporated into the hospice SFP methodology.

- NHPCO requests an update from CMS on the plan for bringing delinquent hospice surveys up to date, as we are very concerned about the backlog and how it will impact survey reforms already in process and how more frequent surveys in the SFP will be managed.

- NHPCO requests that CMS consider the use of AO surveyors to help with the hospice SFP surveys every six months when staffing shortages at the SA preclude timely SFP surveys.

2. **Survey Reports of Substantiated Complaints**

Complaints investigated by both the AO and the SA: AOs and SAs are both required to follow up on complaints. It is possible that if a complainant files a complaint with both the SA and AO, the results could be a substantiated complaint from both agencies which could result in double jeopardy for the hospice provider. It could also result in inaccurate public reporting of surveys as well as SFP selection.

NHPCO Recommendations:

- This clarification of the complaint survey process is necessary since these complaints will be publicly reported. coordination between the SA and the AO is vital. This will ensure that hospice providers are not unduly negatively impacted when the survey is in response to the same complaint, which could often happen.

- We request that the data used for quality-of-care CLDs and substantiated complaints be used only when it is up to date and current, and a pause be implemented in the use of these two components of the hospice SFP algorithm until these concerns are satisfactorily addressed.

3. **Hospice Care Index (HCI)**

NHPCO supports the use of claims data in the hospice SFP algorithm. In the proposed rule, CMS reports that only 78.3% of hospices have a publicly reported HCI score. However, this percentage could decrease if the number of hospices increases, and the same number of hospices have a publicly reported HCI score.

NHPCO Recommendation:

- Since the HCI score is a key element in the methodology, NHPCO is concerned that missing HCI data may exclude hospices where the SFP may be helpful to improve their quality of care. It is also possible that, with missing HCI data, a provider would receive an assigned "0" CLD deficiencies, when the provider may have CLDs that are not available.

4. **Hospice Quality Reporting Program (HQRP): Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Hospice Survey**

NHPCO is committed to having the family voice to reflect on care provided to their loved one, with data collected from the CAHPS® Hospice Survey. We are disappointed to see that only 49.3% of hospices have publicly available data. NHPCO's concerns are detailed below:

Lack of data: Only 49.3% of hospices have publicly available CAHPS® Hospice Survey findings which do not accurately reflect the experience of beneficiaries and families across the Medicare Hospice Benefit. For this to be an effective addition to the SFP algorithm, there needs to be

significant improvement to the caregiver survey return rate so that an increased percentage of hospices have publicly reported CAHPS® hospice survey data. CAHPS® survey return rate currently (Quarter 1 2021 – Quarter 4 2022) stands at 29%.[5]

Algorithm weight: CMS proposes to have two of the four CAHPS® scores weighted at double the other two scores, despite the TEP being presented with an algorithm using a weight for each measure of 0.25.[6] Some providers have raised concerns with the double weight for two of the measures, using examples such as the relative who arrives from out of town late in the patient's disease process and demands immediate attention from on call staff or the patient's family who need help and the on call nurse discusses the issues over the phone but may take some time to get to the patient's home..

NHPCO Recommendation

- NHPCO wants to ensure that the contribution the CAHPS® hospice survey makes to this process is equitable and value-added. NHPCO therefore has serious concerns about the low percentage of hospices with available data.
- Given the data limitations and the benefit to some hospices of not having a CAHPS® score, NHPCO is opposed to the difference in weighting for the CAHPS® measures and strongly recommends that the weight for each of the four measures be equal. For the same reason, NHPCO is opposed to weighting CAHPS® at twice the weight as the survey CLDs, substantiated complaints, or the HCI component of the algorithm.

Perverse incentive to not participate in the CAHPS® Hospice Survey: In the most recent Hospice Wage Index and Quality Reporting final rule,[7] CMS reported that 1,049 hospices, 18.4% of hospices nationwide, did not participate in quality reporting. NHPCO is concerned that there may be hospice providers who choose not to participate so that their CAHPS® Hospice Survey scores can be hidden and would not be considered for possible entry into the hospice SFP. We raise this issue as it may impact the scoring and weights for the CAHPS® Hospice Survey or requires other adjustments to the algorithm.

NHPCO Recommendation

- NHPCO recommends that CMS take a very close look at the hospices who are not participating in quality reporting, as the percentage of hospices not participating is nearly 20%. We believe that for those hospices who choose not to participate in CAHPS® hospice survey, the algorithm may need to reflect negatively on their lack of participation, resulting in the lack of data for this component of the algorithm.

Updates to the CAHPS® Hospice Survey: The implementation of a web-based option for survey completion will increase survey response rates in many parts of the country and allow hospices to target their areas for improvement. NHPCO encourages CMS to move as soon as possible to implement a web-based survey as well as revisions to the survey length and clarity about instructions and the meaning of questions. In addition to the lack of a web-based survey option, many NHPCO members have commented that their response rate is low because caregivers report that they are not interested in completing the survey because it is too long. NHPCO expects that these updates,

[5] CAHPS® Hospice Survey, https://www.hospicecahpssurvey.org/en/public-reporting/scoring-and-analysis/
[6] 2022 Technical Expert Panel and Stakeholder Listening Sessions: Hospice Special Focus Program Summary Report (cms.gov)
[7] FY 2024 Hospice Wage Index and Quality Reporting Final Rule https://www.govinfo.gov/content/pkg/FR-2023-08-02/pdf/2023-16116.pdf

following the 2021 mode experiment and its results, will help increase response rates and allow more hospices to have CAHPS® hospice survey data publicly available.

NHPCO Recommendations

- NHPCO believes that the updates to the CAHPS® Hospice Survey will improve response rates from caregivers. An improved response rate is needed for the use of the CAHPS® Hospice Survey to be a reliable metric for the SFP. We encourage CMS to move forward with CAHPS® improvements as quickly as possible with the changes that have been proposed and tested.

Other concerns with the Hospice Special Focus Program

Public reporting of SFP hospices

CMS proposes to add language about the hospice SFP in § 488.1135*(f) Public reporting*, specifying two different posts to the CMS public-facing website:

(1) The subset of 10% of hospice programs based on the highest aggregate scores and
(2) Hospice SFP selection from the list in paragraph (f)(1) of this section as determined by CMS.

488.1135(f)(1)

Two lists to be posted: While the list of hospices selected for the hospice SFP is expected and indicated in the statute, the list of the bottom 10% of hospices is not specified. NHPCO questions why the list of the bottom 10% of hospices would be publicly posted, as appearance on that list without selection into the hospice SFP is not required.

NHPCO Recommendation

- NHPCO recommends that only the list of hospices selected for SFP be posted on a public-facing website and that § 488.1135*(f)(1)* be stricken.

§ 488.1135*(f)(2) Public reporting* - CMS discretion in selection of hospices:

In the proposed rule, CMS stated, "5,943 hospices would be eligible for participation in the SFP" and "[t]he hospices selected for the SFP from the 10 percent would be determined by CMS." The regulatory language proposed to be added in § 488.1135*(f)(2) Public reporting* states: "Hospice SFP selection from the list in paragraph (f)(1) of this section as determined by CMS.

NHPCO Recommendations

- NHPCO raises a concern about the language "as determined by CMS" in this proposed regulatory change. To ensure transparency and to address concerns about fairness, CMS must provide additional information as to how decisions about entry into the SFP would be determined. The SFP should not be used as a punishment but rather as a tool for struggling hospices.
- We have concerns that to date, CMS has provided no guidance on how it would utilize its discretion and concerns have been raised about decisions that could be politicized. This guidance is critically important as hospice providers review their data and the possibility of entry into SFP.

Expectations when selected for the SFP

Although CMS discusses the algorithm extensively throughout the proposed rule, there is no mention of what a provider should expect when they have been selected for the SFP beyond surveys every six months and the possibility of enforcement remedies. We also note that there is no mention in the proposed rule about technical assistance, outlined in the letter from Congressman Tom Reed and Congressman Jimmy Panetta[8] expressing the intent of the Congress and recommended by the TEP.

NHPCO Recommendation

- NHPCO requests that CMS provide additional details on the SFP process, including the recommendations in this letter once the implementing regulations are finalized.

Provision of Technical Assistance in SFP

From the beginning of Congressional discussions about hospice program integrity and the possibility of a hospice Special Focus Program (SFP), the provision of technical assistance as a component of SFP has been clear. In a letter to HHS Secretary Becerra and CMS Administrator Brooks-LaSure dated September 28, 2021, Congressman Jimmy Panetta and Tom Reed, the authors of the HOSPICE Act (legislation passed in 2020 that overhauled the hospice survey process), confirmed that the intention of the legislation was to "*give CMS the tools and resources needed to help poor-performing hospices address deficiencies through education, training, and enforcement remedies*." They note their desire to prioritize technical assistance over punishment for poor-performing hospices, and to differentiate poor-performing hospices from truly fraudulent providers, saying, "*We want to help struggling hospices improve and deliver quality care and give CMS the ability to target bad actor organizations with appropriate penalties*."[9]

We note that the CY 2022 Home Health final rule also mentions the SFP to "address issues that place hospice beneficiaries at risk for poor quality of care through increased oversight, and/or technical assistance."

As detailed in the TEP Summary Report, the TEP members were asked to discuss how technical assistance should be provided. The report states:

> TEP members strongly suggested that TA be mandatory for hospices that are part of the SFP for the duration of their time in the program. The TEP noted that there would be conflicts of interest if the SFP surveying entity (e.g., the SA) also provided technical assistance. This would add additional time and responsibility to surveyors who are also expected to complete hospice (and other) surveys. Thus, the TEP suggested a list of approved TA providers, on which state and national hospice associations should be included. TEP members noted that national standards

[8] Letter from Representative Tom Reed and Representative Jimmy Panetta to HHS and CMS with Congressional intent for HOSPICE Act implementation https://www.hospiceactionnetwork.org/wp-content/uploads/Hospice_Act_implementation_to_HHS_CMS.pdf

[9] Letter from Representative Tom Reed and Representative Jimmy Panetta to HHS and CMS with Congressional intent for HOSPICE Act implementation https://www.hospiceactionnetwork.org/wp-content/uploads/Hospice_Act_implementation_to_HHS_CMS.pdf

should be developed and shared with the SFP TA entities to ensure consistency in application of the TA.[10]

With the various discussions and written documents about TA in the hospice SFP, as well as the original Congressional intent, NHPCO was surprised to find that there is no mention of technical assistance in the proposed rule. We believe that it is essential to help a poor-performing provider learn what needs to be adjusted to be in compliance with the Medicare Hospice Conditions of Participation.

NHPCO Recommendation

- NHPCO requests that the inclusion of TA language be added to the final rule, so that hospices selected for the SFP will have the opportunity to receive TA to understand the regulations and improve the quality of hospice patient care.

The four national organizations who submitted a comment letter responding to the proposed rule on August 16, 2023, also address other recommendations. The organizations state:

> As an industry, we are committed to providing quality, patient- and family-centered care and want the SFP to succeed in helping struggling hospices improve the care they are providing. Unfortunately, as proposed, it would likely identify providers that are not the most appropriate candidates, while missing hospices that actually need additional support to address quality shortcomings. ***The HOSPICE Act, included in the Consolidated Appropriations Act, 2021 [Public Law 116-260] provided the Secretary discretion in the timing of the SFP, and we strongly recommend CMS utilize this discretion to take the time necessary to modify the SFP algorithm, and give hospices a year of preview reports based on this optimized version, which will align with the SFP's goal to educate and improve struggling hospice providers' quality of care.***

Changes to Provider and Supplier Enrollment Requirements

NHPCO commends CMS for taking steps to combat and address fraud across the hospice industry. NHPCO is committed to working with CMS to continue to address bad actors in the hospice and palliative care industry and believes the proposed provider and supplier enrollment requirements address these concerns.

Form CMS 855

NHPCO agrees with CMS on the importance of Form 855 to "prevent unqualified and potentially fraudulent individuals and entities from entering and inappropriately billing Medicare." In addition, NHPCO supports the revisions to CMS-855A to identify organizational owners as well as expanding organization types on the form. These adjustments were supported in the 34 recommendations NHPCO submitted to CMS in January 2023. Transparency is a valuable tool to address fraud, waste, and abuse in the Medicare program and these revisions move towards more transparency.

[10] 2022 Technical Expert Panel and Stakeholder Listening Sessions: Hospice Special Focus Program Summary Report (cms.gov)

Categorical risk screening

NHPCO supports initially enrolling hospices and hospices with new owners being in the "high" level of categorical risk. The additional requirements for the high level of categorical risk screening will detect and stop bad actors before fraud or abuse can occur.

In addition, NHPCO supports requiring fingerprint for "all hospice owners with 5 percent or greater direct or indirect ownership."

36-month rule

NHPCO supports the expansion of § 424.550(b)(1) to require hospices who undergo a change in majority ownership (CIMO) within 36 months after initial enrollment or following the hospice's most recent CIMO to enroll in Medicare as a new hospice and obtain a state survey or an accreditation from an approved accreditation organization. By implementing the 36 month rule in hospice, CMS will be able to stop the bad actors from the initial enrollment of new hospices or quickly setting up and selling hospice CCNs to new owners without consequences.

NHPCO commends CMS for including the four exceptions to the 36 month rule:

(1) the hospice submitted two consecutive years of full cost reports since initial enrollment or the last CIMO, whichever is later;
(2) the hospice's parent company is undergoing an internal corporate restructuring, such as a merger or consolidation;
(3) the owners of an existing hospice are changing the hospice's existing business structure (for example, from a corporation to a partnership (general or limited), and the owners remain the same;
(4) an individual owner of a hospice dies.

These exceptions provide space for organizations to make business decisions without creating additional burdens.

Non-billing deactivation

NHPCO supports changing the non-billing deactivation timeline from 12 months to six months. This adjustment was supported in the 34 recommendations NHPCO submitted to CMS in January 2023.[11] Good faith providers have minimal, if any, reasons to go six months without billing Medicare so this adjustment will have little impact on these providers. In contrast, bad actors who hold hospice CCN numbers whose only goal of selling the hospice will be brought to light through this proposal.

Including hospice administrators and hospice medical directors as managing employees

NHPCO supports the expansion of the definition of "managing employee" to include the hospice administrator and hospice medical director. Hospice administrators and medical directors are leaders in hospice organizations and adding these roles to the managing employee definition and requiring these roles to be fingerprinted will help deter bad actors.

[11] Hospice Program Integrity Recommendations to CMS https://www.nhpco.org/six-month-update-on-hospice-program-integrity-recommendations/

Reapplication bar expansion

NHPCO supports the extension of the reapplication bar from three years to 10 years.

In conclusion, NHPCO submits the following final recommendations on CMS-1780-P, detailed below.

NHPCO Final Recommendations

(1) NHPCO is supportive of the inclusion of hospice in the IDR process, with the NHPCO recommendations indicated on page 2 of this letter.

(2) NHPCO is also supportive of the changes recommended in the provider enrollment section of this proposed rule, with NHPCO recommendations beginning on page 9 of this letter.

(3) However, NHPCO, along with the other national organizations representing hospices, have the following recommendations on the hospice Special Focus Program (SFP):

a. NHPCO asks that CMS work with the existing SFP Technical Expert Panel (TEP) to improve the SFP algorithm based on the comments received and detailed above. NHPCO requests that the new algorithm be piloted prior to its use publicly for hospices, including the application of the new algorithm for all hospices to assess usability without public reporting.

b. NHPCO recommends that each hospice be given an interim performance report, based on revised algorithm metrics, available to all providers to allow providers to know their standing among hospice providers across the country. These reports will allow struggling providers to begin to address their deficiencies prior to the formal implementation of the SFP, which will ensure that their time in the SFP, if chosen, is utilized fully.

c. NHPCO recommends CMS develop an outline of expectations for providers who are selected for the SFP. This outline should prioritize technical assistance for the hospice provider before enforcement remedies are levied. The SFP should be an opportunity for struggling providers to partner with CMS and surveyors to better understand and implement the Medicare hospice conditions of participations and the compliance requirements.

d. NHPCO recommends that CMS issue a new proposed rule with the modified algorithm to give stakeholders an opportunity to comment.

The consequences of being selected for the SFP are severe, which is why the selection criteria must be designed to identify the subset of hospices that are truly the poorest performers and *most* in need of remediation to address quality concerns. An interim performance period (or preview period) would help providers understand the algorithm, learn where their performance lands compared to others nationally, and identify where they need to target improvements to ensure high-quality care.

Thank you for your consideration of NHPCO's comments on this proposed rule. We welcome continued engagement with you and your staff and the opportunity to meet to discuss our recommendations. If you have questions or want to schedule a meeting, your staff should feel free to contact Patrick Harrison, NHPCO's Senior Director of Regulatory and Compliance at pharrison@nhpco.org or 571-438-9516.

Sincerely,

Ben Marcantonio
Interim Chief Executive Officer