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Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Washington, DC 20201

Dear Administrator Verma:

As the largest national organization representing hospices, home health and home care agencies across the United States, I want to thank you for the extraordinary and sustained efforts that you and others at CMS have put forth during the COVID-19 public health emergency. Our agencies, their caregiving staff, and patients and families are deeply appreciative of your swift action to ease regulatory burdens so that care can be delivered safely and effectively. Through these actions you have demonstrated significant sensitivity to the value and importance of continued access to hospice care for some of our most vulnerable citizens and their loved ones, as well as to the need to protect against the substantial risks that potential exposure to the COVID-19 virus poses to patients, their families, and hospice caregivers.

Roughly 98 percent of hospice care is delivered at the Routine Home Care (RHC) level of care, in a patient's place of residence. In such cases there is limited control over the environment and over potential exposure to illness. Further, in cases where patients reside in nursing facilities, direct access to hospice patients to conduct in-person visits has been dramatically curtailed. For these reasons the flexibilities granted by CMS relative to use of telecommunications technology – where feasible and appropriate, and in keeping with the hospice plan of care – have allowed for the continuation of vital hospice services.

It is too early to make a determination as to when risks associated with the COVID-19 virus will subside sufficiently to allow for some return to normalcy in the health care system, but it is widely believed that health care delivery will be altered for the foreseeable future by COVID-19. This will most certainly be the case for services rendered to individuals with serious illness and those that are terminally ill. Given this likelihood, we believe it is an appropriate time to begin discussions around steps that can be taken by CMS to establish permanent Medicare policies related to the ongoing use of telecommunications technology in hospice care. Further, it may be time to set in motion actions that will allow for proper

monitoring of utilization of technology-based visits and for assessment of their impact on quality of care outside of the current public health emergency. We urge your consideration of the following recommendations.

Technology-based Hospice Visits: As referenced above, under COVID-19 hospices have experienced significant difficulties in accessing hospice patients, either because patients and families fear allowing caregiving staff into the home due to the potential for exposure to the virus or due to limits imposed by care facilities and congregate living sites. Many hospice providers believed that, as the result, they needed to discharge patients because they could not adequately address the care needs outlined in the plan of care. In informal discussions with members of the hospice community, CMS officials noted that there are no requirements under the hospice Conditions of Participation (CoPs) that visits outlined on the plan of care must be delivered in person; rather, services could be provided using technology as long as they meet the goals of care established by the interdisciplinary team (IDT). Review of the hospice CoPs makes clear that the only explicit requirement for an in-person visit relates to hospice aide supervision. Subsequent to these discussions, CMS issued an Interim Final Rule ([Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency – CMS-1744-IFC](#)) on March 30, which sought to “provide more clarity on how hospices can leverage technology to keep clinicians and patients safe during the PHE for the COVID-19 pandemic.” Specifically, CMS amended the hospice Special Coverage Requirements at 418.204 as follows:

418.204 – Special Coverage Requirements

(d) Use of technology in furnishing services during a Public Health Emergency. When a patient is receiving routine home care, during a Public Health Emergency as defined in § 400.200 of this chapter, hospices may provide services via a telecommunications system if it is feasible and appropriate to do so to ensure that Medicare patients can continue receiving services that are reasonable and necessary for the palliation and management of a patients' terminal illness and related conditions. The use of such technology in furnishing services must be included on the plan of care, meet the requirements at § 418.56, and must be tied to the patient-specific needs as identified in the comprehensive assessment and the plan of care must include a description of how the use of such technology will help to achieve the goals outlined on the plan of care.

CMS has further clarified on provider information calls that a variety of telecommunications options (including audio only) are permitted for use, provided the technology is included on the plan of care and that the goals of care, as also outlined on the plan of care, are met. This includes potential use of telecommunications technology to complete patient assessments as long as the hospice is able to conduct a thorough assessment using the selected technology. Otherwise an in-person visit may be needed.

While many hospice providers have had significant success with use of technology-based visits prior to the pandemic, many others did not utilize technologies to their fullest extent because they believed they were required to provide all in-person visits. In response to CMS' clarification, hospice providers throughout the nation have begun to explore the potential for broader use of technology in hospice care delivery, and have found that, when used appropriately, this mode of care can provide substantial benefits to patients, family members, and hospice staff. At the same time, it is vital that the appropriateness of technology used for service delivery – like all other aspects of hospice care – be determined on a case-by-case basis, and by the full IDT, to ensure that patients and family members continue to receive the full benefit that hospice care has to offer.

Under existing claims submission requirements, hospices are expected to include visits performed by medical, nursing, medical social service, PT, OT, SLP, and hospice aide visits (as well as medical social services telephone calls) using a specified revenue code on the claim. As part of the interim final rule, however, CMS specified that any visits provided using telecommunications technology (with the exception of medical social service telephone calls) should **not** be included on the hospice claim. Additionally, while visits provided in the last 3 days of life (and in the last 3 to 7 days of life) performed by RNs, physicians/NPs/PAs, medical social workers, chaplains or spiritual counselors, LPNs, and hospice aides are reported under Section O of the Hospice Item Set (HIS) record to collect data to support the Hospice Visits When Death is Imminent quality measure, CMS has not yet released guidance to hospice providers as to whether visits performed using telecommunications technology should be included as part of the HIS Discharge record.

The current prohibition on reporting of technology-based visits on hospice claims and lack of guidance around reporting of technology-based visits as part of Section O of the HIS Discharge record severely limit the ability of CMS, hospice providers and other stakeholders to assess the impact and value that use of technologies can bring to the delivery of hospice services, and to determine the full scope of patient and family interactions being conducted by various hospice care disciplines.

Recommendations: CMS should take the following actions to encourage the appropriate use of telecommunications technology in the delivery of hospice care:

- Clarify that hospice providers are permitted to use telecommunications technology -- as appropriate and feasible, and in compliance with applicable HIPAA requirements -- to perform service visits as determined by the IDT and as outlined and specified on the plan of care beyond the current public health emergency;
- Fast-track development of modifiers or revenue codes that reflect various types of telecommunications-based visits for use in reporting on hospice claims; and
- Clarify that hospice providers may include telecommunications-based visits as part of visit reporting under Section O of the HIS Discharge record.

Use of Telecommunications Technology to Fulfill the Hospice Face-to-face Requirement: In accordance with the Affordable Care Act, for recertifications on or after January 1, 2011, a hospice physician or hospice nurse practitioner (NP) must have a face-to-face (F2F) encounter with each hospice patient prior to the beginning of the patient's third benefit period, and prior to each subsequent benefit period, to gather information to support the patient's continuing eligibility for hospice care. The clinical findings gathered during the face-to-face encounter are to be used as part of the certifying physician's narrative supporting a life expectancy of six months or less. The F2F is an administrative requirement and is not billable by the hospice.

Completion of the hospice F2F requirement in a timely manner can be challenging since it may only be performed by a hospice physician or hospice-employed NP, and these disciplines are much in demand for the provision of medical and nursing services, frequently with limited notice. Further, scheduling of the F2F can be problematic when patients are brought onto care after a break in hospice service due to the time frames established for the hospice F2F. During the COVID-19 pandemic, these challenges have been further exacerbated by limited in-person access to patients.

As part of the March 30 Interim Final Rule, CMS noted that "statute is silent as to whether a face-to-face encounter solely for the purpose of Medicare hospice recertification....could be conducted via telecommunications technology by the hospice physician or NP....we believe that such visit could be

performed via telecommunications technology as a result of the PHE for the COVID-19 pandemic.” As part of the Interim Final Rule, CMS amended 418.22(a)(4) on an interim basis to allow the face to-face encounter conducted by a hospice physician or hospice NP (if conducted for the sole purpose of hospice recertification) to occur via a telecommunications technology and is considered an administrative expense.

Recommendation: Given CMS’ recognition that statute does not prohibit use of telecommunications technology for purposes of performing the hospice F2F requirement, we urge that the agency take action as follows:

- Develop regulations that would permanently allow the hospice F2F recertification to be completed using telecommunications technology where feasible and appropriate.

In closing we thank you for your continuing work to ease regulatory burdens on health care providers and allow for appropriate use of technologies in this regard. We welcome the opportunity to discuss these recommendations with you further, or to answer any questions you might have.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Dombi". The signature is written in a cursive, flowing style.

William A. Dombi
President