

September 8, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20201

**RE: Comments on the Calendar Year (CY) 2024 Medicare Physician Fee Schedule (MPFS)
Proposed Rule [CMS-1784-P]**

Dear Administrator Brooks-LaSure,

The National Partnership for Healthcare and Hospice Innovation (NPHI) is pleased to submit the following comments on the U.S. Department of Health and Human Services (HHS) proposed CY 2024 MPFS rule.

NPHI is a collaborative of 100+ not-for-profit, community-integrated hospice and palliative care providers dedicated to ensuring patients and their families have access to care that reflects their individual goals, values, and preferences. Representing providers from 37 states and the District of Columbia, NPHI and its members help design innovative and effective models of care, advocate for comprehensive and community-integrated care customized to meet each person's unique needs, and build collaboration between national thought leaders and policy makers.

The proposed rule, issued by the Centers for Medicare and Medicaid Services (CMS) on July 13th, establishes via the Consolidated Appropriations Act of 2023 (CAA 2023), that the hospice interdisciplinary group (IDG) is required to include at least one social worker, marriage and family therapist (MFT), or mental health counselor (MHC). In this rule, CMS proposes to modify the requirements for the hospice Conditions of Participation (CoPs) to allow social workers, MHCs, or MFTs to serve as members of the interdisciplinary group (IDG). The rule also includes a proposal to create new reimbursement codes that would allow for caregiver training services (CTS) to be covered by the Medicare program.

NPHI recognizes the important and timely changes made in the proposed rule and values the opportunity to offer the unique perspective of not-for-profit providers with respect to these specific proposed changes. We offer additional details and comments on specific policies below.

1. Valuation of Specific Codes (section II.E.): Caregiver Training Services

CMS has historically not covered codes that described services provided to individuals without the patient present. However, beginning in CY 2022 the AMA Relative Value Scale Update Committee (RUC) recommended creating new codes to support group behavior management/modification training for caregivers of patients with a mental/physical health diagnosis, caregiver training to facilitate patient functional performance in the community, and an add-on code for group caregiver functional performance training.

As hospice providers know well, family caregivers play a critically important role in caring for their loved ones throughout the serious illness and end-of-life journey. Due to the nature of the

Medicare hospice benefit and the infrastructure to support caregivers, it is inevitable that some portion of support for these patients falls to the friends and family of the individual. As such, CMS believes that in certain circumstances, caregivers can play a key role in developing and carrying out the treatment plan established by treating practitioners for the patient. Thus, CMS believes that Caregiver Training Services (CTS) could be reasonable and necessary to treat the patient's illness.

NPHI is pleased to see these proposals included in the CY 2024 MPFS and supports CMS' efforts to improve education and training of caregivers as they support patients throughout the course of aging and illness. However, we request that CMS clarify that hospices are eligible to bill for these new codes through the normal processes with their respective Medicare Administrative Contractor (MAC) without having to enroll in Medicare Part B to do so. This would align with how other physician services outside the Medicare Hospice Benefit are billed currently.

2. Hospice: Changes to the Hospice Conditions of Participation (section III.O.)

The CAA 2023 established a new Medicare benefit category for MFT services and MHC services furnished by and directly billed by MFTs and MHCs, respectively. CAA 2023 specifically adds these services to covered hospice care services. In order to implement this provision of the CAA 2023, CMS proposes to modify the requirements for the hospice CoPs: "Interdisciplinary group (IDG), care planning and coordination of service" and "Personnel qualifications." This statutorily required modification allows MHCs or MFTs to serve as members of the IDG. **Specifically, the CAA 2023 states that the hospice IDG is required to include at least one social worker, MFT, or MHC.** In addition, CMS proposes to modify the hospice personnel qualification to also include qualifications for an MFT and an MHC.

Traditionally, social workers (SW) have helped patients and families address a broad range of social, emotional, and practical challenges at the end of life, some of which could otherwise be performed by MFTs and MHCs. Giving hospices the option to choose whether to use a SW, MFT or MHC, based on the unique needs of the patient and family, will provide valuable flexibility for hospices to address the emotional and/or behavioral issues impacting certain patients and their families. As such, NPHI is strongly supportive of the decision to incorporate these disciplines into the hospice IDG where appropriate based on patient and family needs.

Based on the statutory provision¹, the hospice community has interpreted the provision as providing hospices with the option to choose whether to employ a SW, MHC, or MFT, but not as a requirement that they must employ or contract with all three at all times. However, NPHI is concerned that CMS is proposing implementation regulations that they are interpreting as a requirement that hospices employ or contract with all three disciplines to be in compliance. On an August 30, 2023 Open Door Forum (ODF) call, CMS personnel, in response to a question about this provision, implied that this was their understanding of the proposed regulation.

This is in direct contradiction to the legislative intent and statutory language of the provision. Hospices are already under duress from an ongoing workforce crisis and the possibility of having to establish contracts or employment arrangements with MFTs and MHCs would simply add to

¹ [Section 4121\(b\)\(2\) of CAA 2023](#)

the burden many are already facing. Some hospices, especially non-profit, mission-driven providers, may not have access (whether they serve a rural area or cannot afford to compete with other provider types in their service area) to an adequate supply of these disciplines in the first place. **We ask that CMS clearly clarify that the proposed inclusion of MFTs and MHCs in the hospice IDG is an option and not a requirement.**

Conclusion

Thank you again for the opportunity to provide comments on CMS's proposed regulation regarding the CY 2024 MPFS. As always, NPHI appreciates the opportunity to provide insight and commentary into how various proposed regulatory, compliance, and quality reporting changes may impact the not-for-profit hospice and palliative care provider community. If you have any questions concerning these comments or would like to discuss these issues further, please contact NPHI's Policy Director, Ethan McChesney, at emcchesney@hospiceinnovations.org.

Sincerely,

A handwritten signature in black ink that reads "Tom Koutsoumpas". The signature is fluid and cursive, with a large, sweeping initial "T" that extends above the line of the rest of the name.

Tom Koutsoumpas
Founder and CEO
NPHI