The Honorable Michael Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles Schumer
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Hakeem Jeffries
Minority Leader
U.S. House of Representative
Washington, DC 20515

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
Washington, DC 20510

Re: *Opposition to using Medicare Hospice Benefit funding to pay for non-hospice policies without simultaneously addressing major hospice issues*

Dear Speaker Johnson, Leader Schumer, Leader McConnell, & Leader Jeffries:

On behalf of the National Hospice and Palliative Care Organization (NHPCO), the National Association for Home Care & Hospice (NAHC), the National Partnership for Healthcare and Hospice Innovation (NPHI), and LeadingAge, we strongly urge you to reject efforts to use the Medicare hospice benefit (MHB) as an offset in the fiscal year 2024 funding bills currently being negotiated without also allocating funding to improve the hospice program itself. **Specifically, we oppose extending the Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act) provision that modifies the hospice aggregate cap indexing formula as a pay-for for non-hospice legislative priorities.** We object to the prospect of any savings from this extension being used to pay for activities that would not be focused on improving care for hospice patients and their families. At a time when the population is aging rapidly, the demand for high-quality end-of-life care is increasing, and only half of people with Medicare who die each year use any hospice at all, it is concerning that Congress would use the MHB as a "piggybank" to fund programs totally unrelated to the provision of hospice services.

The IMPACT Act included hospice-specific provisions as a response to the need for more frequent, high quality hospice surveys. The bill required hospices to be surveyed every three years beginning April 2015 and ending September 2025. To support the increased survey schedule, the bill allocated to the Centers for Medicare & Medicaid Services (CMS) Program Management Account $25M for FY15 through FY17, and $45M for FY18 through FY25. Additionally, the IMPACT Act modified how the hospice aggregate payment cap ('the cap") is calculated, requiring that it be indexed every year to the annual hospice base payment update amount, rather than the Consumer Price Index for all urban consumers (CPI-U) for medical care expenditures; switching the cap index in this way resulted in a lower annual percentage increase to the cap amount, which produced the savings that offset the additional expenditures for increased surveys. This change to the cap calculation method was estimated to result in $540M in savings over 10 years starting in 2017.[1]

The HOSPICE Act, included in the Consolidated Appropriations Act, 2021(CAA of 2021)[2], made permanent the requirement that hospices be surveyed every three years, and provided an additional $10M a year beginning in 2022 for survey administration, surveyor training and competency, and a hospice special focus program (SFP). Unfortunately, since passage of the IMPACT Act, the extension of the cap calculation change has been used three separate times as an offset for non-hospice priorities in different legislative packages, including the CAA of 2021. The projected savings from this offset have continued to

[1] CMS FY2016 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements. Federal Register :: Medicare Program; FY 2016 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements

[2] Consolidated Appropriations Act, 2021 (Public Law 116-220)

grow since the IMPACT Act became law. Most recently, in November 2023, CBO scored a one-year extension of the change, included in the Senate's Better Mental Health Care, Lower-Cost Drugs, and Extenders Act, at $927M[3]. Unfortunately, the Senate legislation, while advancing other health policy priorities, does not include any policies that would support or improve the hospice program. It is disappointing to see an offset that was initially created to improve hospice quality be used for dozens of non-hospice issues, especially given that the savings this change produces have grown almost 20-fold since it was first utilized.

As associations representing the entire field of hospice providers, we have also continued to work proactively with Congress and the Administration to ensure proper oversight of the benefit and to root out "bad actors" in the program that seek to exploit and defraud patients, families, and taxpayers. Last year, we provided 34 recommendations to strengthen hospice program integrity, and are pleased to see CMS moving forward with at least 17 of them to-date.[4] However, there is still more that can be done to ensure the most effective, targeted hospice oversight infrastructure is in place to support high quality care. When the IMPACT Act requirement to survey hospices at least once every three years was enacted, there were 4092 hospices; Over 3,000 hospices have become Medicare-certified since this time. This accelerated growth has challenged survey entities' ability to survey all hospices in the statutorily required 36-month timeframe. Currently, according to CMS' own data, 39.1%[5] of hospices are behind on their standard surveys. Congress could support enhanced oversight by providing CMS with the additional resources it needs to implement a more robust and timely survey process. Congress should also address CMS' flawed hospice SFP design, ensure congressional intent is followed by strengthening the program's ability to identify the truly poorest-performing hospices for SFP selection, and require that adequate resources are committed to the program's success.

We thank you for your longstanding support to protect hospice and improve the care and quality of life for seriously-ill individuals and their families. As increasing numbers of people utilize the MHB, it is critical that Congress commit to both improving the benefit and maintaining access to high-quality end of life care. To that end, we urge you to strongly reject any attempts to cut hospice as a pay-for for non-hospice Medicare priorities.

Sincerely,

LeadingAge
National Association for Home Care & Hospice
National Hospice and Palliative Care Organization
National Partnership for Healthcare and Hospice Innovation

CC: Senate Finance Chairman Wyden and Ranking Member Crapo; House Ways and Means Chairman Smith and Ranking Member Neal

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[3] Congressional Budget Office, Estimated Budgetary Effects of the Better Mental Health Care, Lower-Cost Drugs, and Extenders Act and Certain Provisions of the Modernizing and Ensuring PBM Accountability (MEPA) Act.
https://www.finance.senate.gov/imo/media/doc/cbo_estimate_of_the_better_mental_health_care_lower-cost_drugs_and_extenders_act_and_certain_provisions_of_the_modernizing_and_ensuring_pbm_accountability_mepa_act.pdf#page=4
[4] https://www.nhpco.org/wp-content/uploads/Hospice_Program_Integrity_Ideas_Hospice_Industry_Consensus.pdf
[5] QCOR data as of 12/18/23