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June 9, 2020

The Honorable Seema Verma  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-1737-P  
P.O. Box 8016  
Baltimore, MD 21244-8016

Submitted electronically to <http://www.regulations.gov>

Re: Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (SNFs); Updates to the Value-Based Purchasing Program for FY 2021

Dear Administrator Verma:

AARP, on behalf of our nearly 38 million members and all older Americans nationwide, appreciates the opportunity to comment on this Medicare skilled nursing facility (SNF) payment proposed rule. The situation in our nation's nursing homes is dire with more than 46,000 deaths among residents and staff in nursing homes and other long-term care facilities already reported by *The Wall Street Journal*. We believe more must be done to stem the loss of life and improve conditions in America's long-term care facilities. Our comments will focus on the implementation of the Patient Driven Payment Model (PDPM), which will be entering its second year in fiscal year 2021, and related issues associated with the COVID-19 pandemic.

### Understanding the Impact of the PDPM

CMS implemented a new payment system for SNFs in fiscal year 2020, basing payment more on resident characteristics than the previous system and attempting to address concerns that the former payment system incentivized SNFs to overuse rehabilitation therapies. We remain concerned that the PDPM could create financial incentives for SNFs to under-supply some services and to limit care for some residents, particularly those who are older and have longer SNF stays. As we have commented in the past, it is particularly important to monitor these issues during initial implementation of the PDPM in ways that will allow CMS to quickly understand and address emerging problems affecting SNF residents.

To understand the impact of the PDPM on SNF residents, AARP continues to urge that CMS establish a system of early warning/near real-time data collection and reporting. This system should be transparent and include public reporting of information and analysis that shows how the PDPM is impacting SNF residents.

Monitoring should be used to help ensure that each individual resident has their therapy needs met. We generally believe that individual therapy can best address a specific resident's care needs. CMS has acknowledged that SNFs may be incentivized under the PDPM to emphasize group and concurrent therapy in place of individual therapy. Widespread reports of cuts in therapy staffing in some SNFs just as the PDPM began<sup>1</sup> underscore the need for careful monitoring and investigation by CMS to ensure that residents continue to receive these services when needed. For these reasons, monitoring and enforcement of SNF compliance with the combined 25% limit on concurrent and group therapy as a share of each resident's total therapy regimen, by discipline, during the resident's Medicare-covered SNF stay is important. CMS should monitor and publicly report on the extent to which this warning edit is triggered and consider putting an appropriate penalty in place to further assure compliance.

### COVID-19 Public Health Emergency

At the same time, SNFs and other long-term care facilities have become ground zero in the COVID-19 pandemic, and during the public health emergency preventing the spread of infection to protect the health of residents and staff is paramount. Despite this, CMS should not lose sight of the need to have a system in place to monitor and assess the effects of the PDPM and ensure that residents receive the services they need during the public health emergency and beyond.

AARP has separately communicated with the Secretary and CMS on several issues related to nursing home care during the COVID-19 pandemic, some of which are intertwined with SNF payment and concerns about the PDPM. For example, SNFs should take steps whenever possible to continue to provide needed therapy and resident exercise when the public health emergency necessitates changes in facility procedures.

Further, when in-person family visits are prohibited, SNFs should be required to make available and facilitate virtual visitation via phone calls and video-conference or other technologies that link residents and their loved ones. Not only do such visits provide comfort to residents, they allow loved ones to observe conditions and report any safety concerns. In addition, technology used for virtual visits could also be used for telehealth and possibly to assist with therapy during the public health emergency. Further, as outlined in our March 17 letter to CMS, we urge the agency to modify its March 13 guidance to strengthen nursing home communications with the primary caregiver(s) of nursing home residents.

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<sup>1</sup> For example, <https://www.modernhealthcare.com/payment/therapists-decry-layoffs-amid-snf-reimbursement-overhaul> and <https://skillednursingnews.com/2019/12/snn-poll-43-of-operators-vendors-have-laid-off-therapy-staff-post-pdpm/>.

Communication with residents and family members is particularly important when SNF residents are moved within a facility or transferred to another facility in keeping with guidelines for cohorting residents to separate those who test positive for COVID-19 from others. Facilities should be required to provide timely notice and comprehensive information to residents and loved ones in the case of a transfer or discharge, including a summary of the resident's rights, information on visitation rights, the right to appeal a discharge or transfer, and written notice of the long-term care ombudsman's name and contact information prior to discharge.

Ensuring adequate staffing levels in SNFs is vital, especially during the current pandemic. Some staff may be unable to work, and infection control procedures, while essential, may take away from regular care hours. CMS on its own, and working with Congress, should consider the best measures to appropriately ensure that staffing levels are met. Factors such as recruitment, training, retention, and compensation, as well as the creation of career ladders should be addressed during this crisis and beyond. In addition, we urge you to provide guidance on how facilities should inform residents and family members when staffing shortfalls do occur, as well as the steps they are taking to correct the problem. It would also be helpful to include in such guidance what CMS would require states or facilities to do with respect to understaffing, especially if it is significant.

Again, AARP appreciates the opportunity to comment on this proposed rule and to emphasize the importance of CMS monitoring in real time the impact of the PDPM to quickly address issues that may arise that may negatively affect Medicare beneficiaries. If you have questions, please feel free to contact me or Rhonda Richards on our Government Affairs staff at 202-434-3770 or [rrichards@aarp.org](mailto:rrichards@aarp.org).

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner", with a long horizontal flourish extending to the right.

David Certner  
Legislative Counsel and Legislative Policy Director  
Government Affairs