VHCAVCAL
Virginia Health Care Association | Virginia Center for Assisted Living

May 19, 2022

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1765-P
P.O. Box 8016
Baltimore, MD 21244-8016

RE: CMS 1765-P – Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2023; Request for Information on Revising the Requirements for Long-Term Care Facilities To Establish Mandatory Minimum Staffing Levels

To Whom It May Concern:

The Virginia Health Care Association – Virginia Center for Assisted Living (VHCA-VCAL) is Virginia's largest association representing skilled nursing facilities (SNFs). Our over 250 nursing facility members care for some of Virginia's most vulnerable and frail citizens. VHCA-VCAL's diverse membership includes proprietary, not-for-profit, and government-operated facilities dedicated to providing the highest quality of care.

Last year as comment to the 2022 Prospective Payment System (PPS) update, we wrote asking that CMS consider that the impact of COVID needed to be further studied as it related to the calculation of the proposed parity adjustment; and, that the market basket did not seem to reflect the current (at the time) cost experience of nursing facilities in Virginia. We asked that the agency conduct this analysis before implementing a parity adjustment, and that if the adjustment was still warranted, that it be phased over several years at a maximum of 1 percent per year. VHCA-VCAL members were relieved with the action taken by CMS to defer the parity adjustment in the 2022 update, and to do much of the analysis we, and many other stakeholders, had requested.

We understand that CMS has attempted to isolate the impact of COVID from the analysis of the aggregate cost of the Patient Driven Payment Model (PDPM) as compared to RUGs in the 2023 PPS update. Our further understanding is that the methodology behind that analysis is similar to that proposed by organizations such as the American Health Care Association with the technical resources to inform an accurate estimation methodology. We applaud CMS for listening to the provider community on this need. Although the analysis indicates that a parity adjustment is still warranted, we are relieved to see that the percentage has declined.

However, our concerns with the market basket update remain. While we understand the market basket is driven by specific inputs, we would acknowledge from the Virginia perspective that it is clearly a "lagged" indicator of inflation. The Virginia Medicaid program conducts a "wage survey" of nursing facilities each year to inform our Medicaid inflation adjustment. Data for our fiscal 2023 rates indicated a 14.8 percent increase in nursing compensation (a composite of employee and agency staff) from the previous year. This is the highest increase we have ever seen. Non-nursing compensation was up 7.3 percent. On top of the compensation cost increases, benefits and various insurance costs were all up considerably as well. In other words, a market basket update of 2.8 percent seems woefully inadequate compared to the actual cost

facilities are experiencing today (even at 3.9 percent with the forecast error from the previous year included).

Considering the concern that the market basket is not “up-to-date” in regard to cost, the net reduction for 2023 rates of 0.7 percent by applying the full parity adjustment (-4.6 percent) to the market basket (2.8 percent), forecast error adjustment (1.5 percent), and productivity adjustment (-0.4 percent) will be a major blow to the financial viability of the sector. For these reasons, we would reiterate our request, absent some type of more accurate/timely calculation of the market basket, that **CMS consider a multi-year (no less than three years) phase-in of the parity adjustment**. This would mitigate the immediate impact of applying the full adjustment while allowing the market basket to gradually reflect the true cost experience. As the market basket moves up in the next few years, the annual effect of the phased parity adjustment would be smoothed over time. This would likely still result in rate increases, albeit smaller than the actual market basket amounts.

In regard to the request for input on minimum staffing, we strongly oppose a federally enforced numerical standard. Even if we agreed with the premise of a staffing standard, which we do not, there are too many factors outside the control of the facilities themselves that impact performance relative to a standard. According to the Bureau of Labor Statistics, Virginia has lost 13.8 percent of the nursing and residential care workforce from February 2020 through March 2022, essentially wiping out 12 years of employment growth (without a mandated standard) in the sector. This is despite numerous efforts to hire and retain staff (resulting in the afore-referenced 14.8 percent compensation increase, among other things). While we have some capacity for modest CNA training programs in our member facilities, we rely heavily on secondary and post-secondary instruction to supply the clinical workforce (CNAs, LPNs and RNs) that would likely be necessary to meet staffing standards.

Providers are ensuring they can meet resident care needs without a staffing standard in place by closing beds to admission or limiting the types of admissions based on the patients’ needs and available staffing. This is both appropriate and necessary, albeit difficult because unoccupied beds produce no revenue and still contribute to costs. Facilities are working aggressively to backfill the staff lost during the pandemic and also want to add additional staff above the pre-COVID levels but have not had much success in doing so. Providers are remaining operational through a heavy reliance on costly, less effective agency staffing. Contract hours are up 58.4 percent for CNAs and 63.3 percent for LPNs in 2021. This is unsustainable, but the workforce pipeline is not there to provide relief. Whether we agree with the concept of a mandated staffing ratio or not, it is clear that imposition of one would not create the individuals to fill the roles.

Virginia has opted for an incentive-based approach to staffing and other quality improvements with a Medicaid Value-Based program set to launch July 1. Unlike the Medicare program, this program is not setting aside some percentage of an already low Medicaid rate (Medicaid rates being another factor that varies across states that a federal ratio cannot control but that has a direct impact on the ability to add staff). Instead, Virginia’s incentive-based program will add new money to the system to encourage and help offset the costs of increased employment/retention and quality improvement. Staffing will remain a challenge due to the supply of a trained workforce, but Virginia will be postured to make strides once the labor pool expands.

In conclusion, VHCA-VCAL encourages CMS to phase-in the parity adjustment over time while the market basket better reflects the cost experience of the providers. A net reduction in the

payment rate will be a significant financial strain on the sector. VHCA-VCAL does not support a mandated staffing ratio; such a requirement is currently unfeasible due to the lack of skilled nurses and trained staff entering the workforce to fill the high number of preexisting open positions. There are simply not enough people to hire the loss of 13.8 percent of the workforce on top of needing to hire more to meet additional requirements. We appreciate your consideration of our comments in the development of the final rule.

Sincerely,

Keith Hare
President and CEO