

May 26, 2021

The Honorable Chiquita Brooks-LaSure, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8016
Baltimore, MD 21244-8016

Submitted Electronically to www.regulations.gov

Re: 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 2022 [CMS-1746-P]

Dear Administrator Brooks-LaSure:

The American Nurses Association (ANA) is pleased to comment on the Centers for Medicare & Medicaid Services (CMS) Fiscal Year 2022 Prospective Payment System proposed rule for skilled nursing facilities (SNFs). The comments below respond to 1) CMS' proposal to collect and publish rates of vaccinations of health care personnel (HCP) in SNFs as part of the Quality Reporting Program (QRP); and 2) CMS' request for information about "revising several CMS programs to make reporting of health disparities based on social risk factors and race and ethnicity more comprehensive and actionable for providers and patients."¹ To summarize the comments below:

- 1. ANA opposes CMS' proposal to collect and publish rates of vaccinations of HCP as part of the QRP.**
- 2. ANA supports comprehensive and actionable reporting of health disparities for the QRP, and recommends CMS include nurses' perspectives to develop relevant data elements.**

Our reasons are set out below:

- 1. ANA opposes CMS' proposal to collect and publish rates of vaccinations of HCP as part of the QRP.**

CMS proposes to collect COVID-19 vaccination data on Medicare SNFs' health care workforce beginning in the third quarter of calendar year 2021. SNFs would be required to report quarterly on the cumulative number of health care personnel (HCP) who have been fully vaccinated for at least one day during the reporting period. For quality measurement purposes, this measure is referred to as MUC20-0044. CMS proposes to publicly report on MUC20-0044 at the facility level on the Medicare Compare website, starting in 2023.

At the time of publication of the proposed rule, April 15, 2021, the measure was subject to voluntary weekly reporting by long-term care facilities, including SNFs, through the National Healthcare Safety

¹ 86 F.R. 19954, 20000. April 15, 2021.

Network (NHSN) maintained by the Centers for Disease Control and Prevention (CDC). During the comment period, on May 11, 2021, CMS announced an interim final rule requiring long-term facilities, including SNFs, to report HCP COVID-19 vaccination data weekly, through the NHSN, beginning May 21, 2021.² One aim of this data collection is to “identify LTC facilities that have potential issues with vaccine confidence or slow uptake among either residents or staff or both.”³ ANA is not commenting on the Interim Final rule in this comment letter for the 2022 Medicare SNF Payment rule.

ANA opposes requiring Medicare SNFs to report COVID-19 vaccination rates for health care personnel for payment purposes as part of the QRP. While we acknowledge the value of this information for public health and educational purposes, we believe it would not be appropriate at this time to report publicly on MUC20-044 for the purposes of assessing SNF quality performance.

MUC20-0044 Has Not Been Tested and Evaluated for Endorsement. We note that the measure proposed for the QRP was developed for public health tracking during a public health emergency, rather than for quality assessment or payment purposes. Moreover, this new measure has not been tested or submitted for endorsement to the National Quality Forum (NQF). The Post-Acute Care/Long-term Care Workgroup (Workgroup) of the Measures Application Partnership (MAP), which considered Medicare measures for 2021, advised: “Prior to use in SNF QRP, this important measure should have the supporting evidence well-documented, and be fully developed, followed by testing and receipt of NQF endorsement.”⁴

The current state of vaccine science and safety regulation in 2021 is fast-moving and fluid, especially considering the COVID-19 pandemic. For example, the Food and Drug Administration (FDA) has yet to fully approve any vaccination against the COVID-19 virus. Given the uncertainty, we believe it would not be appropriate to use this measure for quality reporting or payment purposes at this time. As noted by the MAP Workgroup: “The durability of immunological response is not currently well understood but may weaken quickly, suggesting that COVID-19 vaccination rates may be a long-term measurement issue.”⁵

Early Reporting on MUC20-0044 Has Questionable Information Value and Could Result in Coercing HCP. Given the fluidity of the coronavirus pandemic and the very early stage of development of MUC20-0044, it is not clear that incorporating 2021 vaccination rates for HCP into quality ratings on Medicare Compare in 2023 would provide valuable information to SNF residents and their families.

ANA is concerned, however, that requiring SNFs to report this information for payment purposes could create incentives for SNF employers to coerce or intimidate HCP who decline the vaccine. We cannot endorse addressing vaccine hesitancy by such means. Further, it is not clear how COVID-19 vaccinations

² 86 F.R. 26306. May 13, 2021.

³ 86 F.R. 26306, 26312.

⁴ National Quality Forum (NQF). MAP PAC/LTC Preliminary Analysis Worksheet. Accessible online at <https://www.qualityforum.org/ProjectMaterials.aspx?projectID=75370>. The full MAP disregarded this advice and offered conditional support for use of the measure for QRPs in a number of rulemakings, including the SNF payment rulemaking. See NQF. Measure Applications Partnership 2020-2021 Considerations for Implementing Measures in Federal Programs: Clinician, Hospital & PAC/LTC. March 2021. Accessible online at https://www.qualityforum.org/Publications/2021/03/MAP_2020-2021_Considerations_for_Implementing_Measures_Final_Report_-_Clinicians,_Hospitals,_and_PAC-LTC.aspx.

⁵ NQF. https://www.qualityforum.org/Publications/2021/03/MAP_2020-2021_Considerations_for_Implementing_Measures_Final_Report_-_Clinicians,_Hospitals,_and_PAC-LTC.aspx

will be financed in the future, and whether HCP will be required to pay out of pocket for vaccines and boosters.

Given that CMS has now mandated weekly reporting of vaccination rates of HCP in SNFs, the agency and its federal partner CDC will have access to reported data without promulgating a duplicative or overlapping requirement through the SNF payment rule. Data reported for public health will provide a basis to assess the measure, make refinements as needed, and potentially support an application for endorsement at a later time. ANA urges CMS to reject QRP reporting on MUC20-0044 in the final SNF payment rule.

2. ANA supports comprehensive and actionable reporting of health disparities for the QRP, and recommends CMS include nurses' perspectives to develop relevant data elements.

CMS is seeking information on changes to the SNF QRP that will enable comprehensive and actionable reporting of health disparities. ANA supports the agency's request for more information to address the important issue of closing the health equity gap. Nurses, in addition to providing quality care to patients, often serve as advocates for their patients and are best positioned to identify factors that could result in inequitable health outcomes. Nurses also reflect the people and communities they serve—allowing them to recognize the challenges faced by their patients and ensure that their patients receive culturally competent, equitable health care services. Nurses are leaders in implementing processes that further quality patient care and highlight existing gaps in care delivery, leading to measurable improvements. The National Academy of Medicine's expert Committee on the Future of Nursing 2020-2030 recently released a report, *Charting a Path to Achieve Health Equity*.⁶ The report serves as a detailed blueprint for engaging nurses "in the complex work of aligning public health, health care, social services, and public policies to eliminate health disparities and achieve health equity."⁷

As the agency looks to identify areas in care delivery that result in or exacerbate health disparities, we encourage CMS to work with nurses on which reporting measures and other patient demographic information should be captured. For example, the agency could consider incorporating measures that capture socio-demographic factors, such as food insecurity as well as disaggregate budget data by those socio-demographics to ensure federal funds are going to intended goals. Other reported measures could include identifying barriers in connected vulnerable patients to needed services in other health care settings or in the community that are critical in ensuring equitable health outcomes, such as stable, supportive housing post-discharge. Collecting this type of information will allow for a more complete assessment of existing issues and factors leading to inequitable care delivery and then work toward a holistic approach to closing the health equity gap. As such, we encourage CMS to leverage the important role of the nurse in identifying and capturing measures to address health equity.

ANA is the premier organization representing the interests of the nation's 4.2 million registered nurses (RNs) through its state and constituent member associations, organizational affiliates, and the individual members. ANA advances the nursing profession by fostering high standards of nursing practice, promoting a safe and ethical work environment, bolstering the health and wellness of nurses, and advocating on healthcare issues that affect nurses and the public. RNs serve in multiple direct care, care

⁶ National Academies of Sciences, Engineering, and Medicine. *The Future of Nursing 2020-2030: Charting a Path to Achieve Health Equity*. 2021. Accessible online at <https://nam.edu/publications/the-future-of-nursing-2020-2030/>.

⁷ Ibid.

coordination, and administration leadership roles, across the full spectrum of health care settings. RNs provide and coordinate patient care, educate patients and the public about various health conditions including essential self-care, and provide advice and emotional support to patients and their family members. ANA members also include the four APRN roles. ANA is dedicated to partnering with health care consumers to improve practice, policies, delivery models, outcomes, and access across the health care continuum.

If you have any questions, please contact Brooke Trainum, Director of Policy and Regulatory Advocacy, at Brooke.Trainum@ana.org or (301) 628-5027.

Sincerely,



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