June 19, 2015

The Honorable Andy Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445–G, Hubert H. Humphrey Building
200 Independence Avenue SW.
Washington, DC 20201

RE: Proposed Rule, Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2016, 80 Fed. Reg. 23332 (Apr. 27, 2015), CMS–1624–P

Dear Administrator Slavitt:

I am writing on behalf of the Alliance for Home Health Quality and Innovation (the "Alliance") to provide comments on the proposed rule on the Medicare inpatient rehabilitation facility ("IRF") prospective payment system for FY 2016 (the "Proposed Rule"). The Alliance appreciates the opportunity to comment on aspects of the proposed rule that relate to the implementation of the Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act).

By way of background, the Alliance is a non-profit 501(c)(3) organization with the mission to lead and support research and education on the value of home health care to patients and the U.S. health care system. Working with researchers, key experts and thought leaders, and providers across the spectrum of care, we strive to foster solutions that will improve health care in America. The Alliance is a membership-based organization comprised of not-for-profit and proprietary home health care providers and other organizations dedicated to improving patient care and the nation's healthcare system. For more information about our organization, please visit: www.ahhqi.org.

Although the vast majority of Alliance members are not Medicare inpatient rehabilitation facility (IRF) providers, the Proposed Rule provides detailed information regarding CMS implementation of the IMPACT Act, which affects not only IRFs, but all of post-acute care, including home health agencies, skilled nursing facilities, and long-term acute care hospitals. Furthermore, IMPACT Act implementation promises to affect not only post-acute care, but also services and care provided in short-term acute care hospitals and a variety of services covered under Medicare Part B (including Part B home health care services, physician services and outpatient therapy). As a result of the far-reaching implications of the IMPACT Act and the steps toward implementation that are outlined in the IRF PPS Proposed Rule, the Alliance

offers comments regarding IMPACT Act implementation in the following areas: (I) support for the intent of the IMPACT Act; (II) the timeline for IMPACT Act implementation; (III) developing an efficient, least burdensome approach to data collection; (IV) approach to regulation and transparency regarding the specifications for measures proposed for IMPACT Act implementation; and (V) engaging with post-acute care stakeholders regularly and frequently regarding measure specifications.

I. Support for the intent of the IMPACT Act

The Alliance supports the intent of the IMPACT Act, which is to develop a standardized patient assessment data set that is common across post-acute care settings in order to support quality measurement and reporting, future post-acute care payment reform, and coordination of care that supports achievement of the Triple Aim (improved patient experience, population health, and lower per capita cost of care). The Alliance believes that improving the standardization of data elements across settings, as well as the development of harmonized quality measures across post-acute care settings (and the rest of the health care system) can propel alignment of incentives and the movement towards a value-based health care system.

To that end, the Alliance previously submitted comments to CMS relating to IMPACT Act implementation, providing input subsequent to a CMS Listening Session on IMPACT Act implementation. It is our hope that this input will support ultimate achievement of the goals of the IMPACT Act[1]. Consistent with those previously submitted comments, the Alliance has additional comments that we are submitting below in the context of the IRF PPS proposed rule, which sheds further light on CMS's plans for implementation.

II. Timeline, Sequencing, and Process for IMPACT Act implementation

As stated in the Alliance's previous comments on IMPACT Act implementation, the Alliance supports a clear timeline for implementation with specific steps or changes and dates to clarify what steps CMS will be taking and when CMS will be taking them. The steps should include the changes that will be made to standardize patient assessment data.

In the Proposed Rule, CMS outlines a general timeline for measure implementation, stating that:

> Under the current IRF QRP, the general timeline and sequencing of measure implementation occurs as follows: specification of measures; proposal and finalization of measures through notice-and-comment rulemaking; IRF submission of data on the adopted measures; analysis and processing of the submitted data; notification to IRFs regarding their quality reporting compliance with respect to a particular FY; consideration of any reconsideration requests; and imposition of a payment reduction in a particular FY for failure to

[1] Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014 Implementation Comments, Alliance for Home Health Quality and Innovation (March 2015). http://ahhqi.org/images/uploads/IMPACT_Act_Listening_Session_Input_from_AHHQI_WEB.pdf

> satisfactorily submit data with respect to that FY. Any payment reductions that are taken with respect to a FY begin approximately one year after the end of the data submission period for that fiscal year and approximately 2 years after we first adopt the measure . . .
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> To the extent that we finalize a proposal to adopt a measure for the IRF QRP that satisfies an IMPACT Act measure domain, we intend to require IRFs to report data on the measure for the fiscal year that begins 2 years after the specified application date for that measure. Likewise, we intend to require IRFs to begin reporting any other data specifically required under the IMPACT Act for the FY that begins 2 years after we adopt requirements that would govern the submission of that data.[2]

Although CMS has outlined a schedule for implementation of measures in the Proposed Rule, there is no explanation of what changes will be made to standardize patient assessment data, and when those changes will be made. There is discussion of submission and reporting of data, but no explanation of what assessment data changes will be made, when they will be made, and whether there will be an opportunity for comment on those changes. These are critical components of IMPACT Act implementation, but they appear to have been left out.

For each post-acute care setting and provider affected by IMPACT Act implementation, it will be critical to understand what assessment data changes will be made, and when those changes will be made. *The Alliance recommends that CMS include in the final rule the aspects of IMPACT Act implementation relating to standardization of patient assessment data in its timeline and sequencing.*

Notwithstanding, the Alliance recognizes the limited time that CMS has to implement against the dates in the IMPACT Act for reporting quality measures in specified domains. The short timeframe for implementation, particularly for SNF, IRF and LTCH measures, presents very significant challenges for CMS as it seeks to comply with the law.

However, it is important to note that the Alliance has significant concerns regarding the process CMS employs for selecting the measures that will apply to post-acute care providers. The IMPACT Act clearly envisions use of a "consensus-based entity" (such as the National Quality Forum or "NQF") to endorse IMPACT Act measures, although it does state that the Secretary may specify a "feasible and practical" measure that is not endorsed "as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization."[3] The Alliance has observed that some of the measures that CMS has selected for IMPACT Act implementation have been endorsed through NQF's consensus development process.

Other measures that CMS has identified for IMPACT Act implementation are going through the endorsement process at present, but have not yet achieved endorsement. Still other measures might apply only to one setting (for example, the long-term acute care hospital setting) and might be endorsed, or even presently going through the NQF process, but CMS is taking the measures and applying them across the board to all post-acute care settings. Although the goal of IMPACT is to develop standardized assessment data and quality measures that apply across

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[2] 80 Fed. Reg. at 23369.

[3] Social Security Act, Section 1899B((e)(2).

all four formal post-acute care settings, having NQF endorsement of measures that apply to each and every post-acute care setting is critical. NQF endorsement of a measure developed for one setting, does not imply appropriate application for all post-acute care settings. Thus, for example, for the functional assessment and care plan development measure that applies to LTCHs, if NQF endorses that measure, such endorsement does not necessarily suggest that such a measure is appropriate for SNF, home health, and IRF settings.

NQF endorsement should be a pre-requisite for measures developed for application and use *in each and every setting*. Particularly for cross-setting measures, use of the NQF process is a key means to ensure consideration by all stakeholders. The NQF consensus development process is an important means of supporting the development of a uniform approach to measurement that makes sense in the face of different health care delivery modes in each post-acute care setting.

To reiterate, the Alliance recognizes that CMS is under tight time constraints for implementation of the IMPACT Act and appreciates the considerable challenge of complying with the dates as legislated. However, *the Alliance recommends in the future that CMS use the NQF process consistent with the IMPACT Act and adopt cross-setting measures that are NQF-endorsed as they apply to each of the four post-acute care settings*.

III. Developing an efficient, least burdensome approach to data collection

Furthermore, as CMS goes forward with implementing standardized patient assessment data, the Alliance recommends that CMS take a least burdensome approach to data collection. The IMPACT Act states that:

> In the case of patient assessment data being used with respect to a PAC assessment instrument that duplicates or overlaps with standardized patient assessment data within a category described in paragraph (1), the Secretary shall, as soon as practicable, revise or replace such existing data with the standardized data.[4]

The Alliance is concerned about the burden potentially associated with completing multiple assessments to satisfy current requirements in MDS, IRF-PAI and OASIS, and in addition to newer data element sets that are being put into place to comply with the IMPACT Act. *To the extent possible, the Alliance urges CMS to use an efficient approach to implementation that will avoid duplication of effort by providers and professionals. Further, the Alliance recommends that CMS include in the timeline and sequencing of implementation an explanation of when existing data elements will be changed or eliminated in exchange for new data elements implemented to comply with the IMPACT Act.*

[4] Social Security Act, Section 1899B(b)(3).

IV. Approach to regulation and transparency regarding the specifications for measures proposed for IMPACT Act implementation

In addition, as CMS proposes measures for IMPACT Act implementation, the Alliance urges CMS to streamline its approach to the regulations implementing the IMPACT Act and provide clarity involving the specifications for those measures.

The proposed and final rules issued annually by CMS to implement the payment systems for post-acute care are often vehicles for implementing various pieces of legislation. However, the IMPACT Act is a unique piece of legislation that is attempting to lay the groundwork for bringing together data collection and measurement for all four formal post-acute care settings. The IMPACT Act domains for measures of quality and resource use are meant to apply across settings and it will be important to think of multiple aspects of the implementation with a mindset that is relative to those various settings. Being able to analyze the assessment data elements and measures collectively (and comparatively) with the other settings will be key to implementation.

As a result, *the Alliance recommends in the future that cross-setting measures and assessment data changes that implement the IMPACT Act be addressed in stand-alone notice and comment rulemakings that apply to all four post-acute care settings. To the extent that payment and quality reporting programs are affected in each setting by the changes in measurement and assessment data, the individual payment system rulemaking processes can continue to be used to make those changes.*

Furthermore, as stated above, the Alliance supports use of the NQF process for each measure as it applies to each post-acute care setting. Though the NQF process could be improved, overall it is an open and transparent process for reviewing measures. However, there may be circumstances where NQF endorsement is not achieved for a measure that CMS uses for IMPACT Act implementation or post-acute care in general. For example, though it is not preferable, there may be cases where CMS uses measures that are modified versions of measures that have been NQF-endorsed, uses measures that were reviewed by NQF but were not endorsed, or uses measures that have not gone through the NQF endorsement process at all. In the event that NQF endorsement has not been achieved for a measure, CMS's transparency involving measure specifications is critical. Such transparency is required in the IMPACT Act, stating the importance of "informing the public of the measure's numerator, denominator, exclusions and any other aspects the Secretary determines necessary."[5]

As evidenced by the fact that the measures proposed thus far for a given domain specified in the IMPACT Act have varied significantly in terms of the numerator, denominator and exclusions for each post-acute care setting, *the Alliance urges CMS to provide clear and transparent explanations of each measure's specifications, providing as much information as possible to the public about the measures proposed.* The level of detail provided about a measure for endorsement through the NQF consensus development process would be helpful for all parties to understand the measures proposed through rule-making.

[5] Section 1899B(e)(1)(A)(i) of the Social Security Act.

V. Engaging with post-acute care stakeholders

In recognition of the importance of the goals of the IMPACT Act, and the complexity and challenges that both CMS and the post-acute care provider community will face in implementing it, *the Alliance recommends that CMS engage with post-acute care stakeholders on a frequent and regular fashion regarding both measure specifications and changes relating to standardized patient assessment data collection.* Improved communications between and among the government and industry representatives can support and facilitate implementation of the IMPACT Act and the achievement of its goals. The feedback that key stakeholders can provide to CMS will enable smooth implementation of the IMPACT Act and achievement of the Triple Aim.

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The Alliance appreciates the opportunity to comment on the Proposed Rule and looks forward to engaging with CMS to further achievement of the Triple Aim. Should you or your staff have any questions, please contact me at tlee@ahhqi.org or 202-239-3671.

Sincerely,

Teresa L. Lee, JD, MPH
Executive Director