June 5, 2023

Ms. Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

SUBMITTED ELECTRONICALLY VIA http://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 2024 (CMS-1779-P)

Dear Administrator Brooks-LaSure:

The Association of Rehabilitation Nurses (ARN) – representing approximately 4,500 rehabilitation nurses and more than 14,000 Certified Registered Rehabilitation Nurses (CRRN) that work to enhance the quality of life for those affected by physical disability and/or chronic illness – appreciates the opportunity to provide comments on the Centers for Medicare and Medicaid Services (CMS) Fiscal Year (FY) 2024 Skilled Nursing Facility Prospective Payment System Proposed Rule (CMS-1779-P).

Rehabilitation nursing is a philosophy of care, it is not limited to a work setting or a phase of treatment. We base our practice on rehabilitative and restorative principles by: (1) managing complex medical issues; (2) collaborating with other specialists; (3) providing ongoing patient/caregiver education; (4) setting goals for maximum independence; and (5) establishing plans of care to maintain optimal wellness. Rehabilitation nurses practice in all settings, including freestanding rehabilitation facilities/inpatient rehabilitation facilities (IRFs), hospitals, long-term subacute care facilities/skilled nursing facilities (SNFs), long-term acute care facilities, comprehensive outpatient rehabilitation facilities (CORFs), home health agencies (HHAs), and private practices.

Rehabilitation nurses take a holistic approach to meeting patients' nursing and medical, vocational, educational, environmental, social, spiritual, and safety needs. We lead and coordinate rehabilitation, restorative care, and community reintegration for populations across all age groups and ethnicities across the care continuum, from ambulatory care to hospice. Rehabilitation nurses begin to provide care to individuals, their families, and caregivers soon after the onset of a disabling injury or chronic illness and continue to provide specialty care, patient and family education, and care transition planning that empowers these individuals to return home, work, and/or school. Rehabilitation nurses, in collaboration with interdisciplinary teams, provide comprehensive, population-specific care management to access health care services, adaptive technology and equipment, and community resources.

ARN supports all efforts to ensure persons with disabilities and chronic illnesses have access to the appropriate level of rehabilitation services to maximize functional outcomes, independence,

and quality of life. Specifically, as a part of its mission, ARN is committed to working with policymakers at the local, state, and federal levels to advance policies and programs that promote maximum independence for all persons in need of rehabilitation. As such, we are pleased to offer the following comments on the proposed rule.

Proposed SNF PPS Rate Setting Methodology and FY 2024 Update
CMS estimates that the payment policies in this proposed rule would result in a net increase of 3.7 percent, or approximately $1.2 billion, in Medicare Part A payments to SNFs in FY 2024. This payment increase is a step in the right direction, but it still falls short of addressing the challenges faced by SNFs. SNFs play a crucial role in providing care to vulnerable populations and adequate payment is essential to ensure that SNFs can maintain high quality care, attract, and retain skilled staff, and invest in necessary resources and supplies.

Additionally, this payment increase is important considering the implementation of the new reimbursement system, the Patient-Driven Payment Model (PDPM). While PDPM was intended to provide a more equitable and value-based payment system, its fixed payment structure and limited flexibility is concerning to ARN members. Therefore, ARN urges CMS to monitor the PDMP's impact and assess the need for adjustments and use its statutory authority to ensure that SNF payments support the long-term sustainability of SNFs and protect patient access to these necessary services.

Consolidated Billing
By statute, SNFs are required to submit consolidated Medicare bills to its Medicare Administrative Contractor (MAC) for specific services received during a covered Part A stay. If the services are not covered, the responsibility is on the SNF to bill Medicare. In this proposed rule, CMS seeks comments identifying HCPCS codes in the "customized prosthetic devices" category representing recent medical advances that might meet the agency's criteria for exclusion from SNF consolidated billing.

Safe Patient Handling and Mobility (SPHM) assistive devices and orthotics and prosthetic items, such as artificial limbs and braces, are crucial to improving functional mobility and self-care activities of daily living (ADL). These items should be excluded from SNF consolidated billing to ensure that patients have access to the most appropriate devices that meet their unique needs. Further, SNFs should be able to provide these services for patients without incurring negative financial consequences. As an example, some SNFs may be hesitant to admit patients who are diagnosed with cancer until they are either finished with treatments or they agree to go after completing a rehabilitation program. If they insist, the oncology team will bill Medicare under the SNF reimbursement when this is not a service that SNFs provide.

SNF QRP Quality Measure Proposals
CMS is proposing to adopt three measures for reporting in FY 2025 and 2026. ARN appreciates that CMS periodically reviews and refines measures to ensure that they align with current practice and contribute to improved quality of care delivered by SNFs. CMS should continue to make improvements to the SNF QRP to ensure that SNFs are delivering high-quality care and achieving positive patient outcomes. As such, we offer the following comments on the proposed measures.

ARN does not support the inclusion of the Discharge Function Score measure. This measure is an assessment-based outcome measure used to evaluate the functional status of Part A SNF residents who meet or exceed an "expected discharge function score" upon release from the SNF. It is important to note that an extended length of stay (LOS) does not necessarily guarantee a successful and functional outcome. In fact, prolonged stays can introduce additional risks such as increased susceptibility to infections and higher costs associated with medications, diagnostic tests, and other medical interventions. Additionally, patients who have a high probability to be discharged to home is often dependent on the skill set of staff to work on functional improvements and well as access to home care technology to keep patient and caregivers safe for an earlier and safe discharge to home. Early data also indicates that if SPHM is included as standard practice of care we have been able to reduce needs to discharge from acute care to a SNF. In addition, there are measures to reduce preventable pressure injuries by updated SPHM technology. ARN members are beginning to measure shorter stays for ventilated patients, as well as reductions of CAUTI and CLABSI with SPHM integrated in the plan of care. Considered together, ARN does not agree with implementing this measure.

ARN does not support the proposed CoreQ Short Stay Discharge measure which would tabulate patient satisfaction with their care in a SNF. If a patient has a successful or better than expected outcome, one bad experience can sway the patient's opinion. We offer the following examples for your review:

- SNF #1 – Staffing includes 1 RN or LPN to 10 patients and 1 CNA to 8 patients. The care team told the patient they are short staffed, and the patient believes it. Reporting outcome is better than federal average, but less than state average.
- SNF #2 – Staffing includes 1 RN or LPN to 25 patients and 1 CNA to 25-28 patients. Reporting outcome is worse than state and federal averages.

The patient feedback in the above examples is different and relies heavily on individual experiences which can introduce bias and may not be fully representative of the SNF's performance.

ARN does not support the addition of the proposed COVID measure, COVID-19 Vaccine: Percent of Patients/Residents Who Are Up to Date. ARN worries that reporting and tracking these measures will necessitate additional administrative burden for SNFs. These measures will pose unique challenges due to the varying comorbidities and preexisting conditions that individuals may have as these factors will impact the specific vaccine recommendations for different medical conditions. One of the challenges in the context of COVID-19 vaccination is the varying recommended number of boosters for different individuals – not everyone will have the same recommended number of boosters. Complying with CDC guidelines may be challenging, and this information may be hard to reflect in reporting. Moreover, it will be time consuming to collect this information, leading to increased administrative burden, especially if CDC revises its guidance.

In order for SNFs to comply with data collection, reporting and potential audits related to COVID-19 vaccine measures, increased time, personnel, and financial resources will be required. These resources would be better utilized for direct patient care, rehabilitation services, or other quality improvement initiatives that align more closely with the primary mission of SNFs.

Therefore, ARN believes the costs associated with these measures far outweigh the benefits of its use in the SNF QRP.

Based on these considerations, ARN believes that the current moment may not be the optimal time for CMS to implement these SNF QRP measures. Instead, we urge CMS to prioritize addressing the pressing issues of workforce shortages and reducing regulatory burden to ensure the delivery of high-quality care in SNFs.

Principles for Selecting and Prioritizing SNF QRP Quality Measures and Concepts Under Consideration for Future Years: Request for Information (RFI)
In keeping with the goals of the National Quality Strategy, CMS is seeking information from stakeholders to assist the agency in improving the quality of care of SNF patients. Specially, CMS is seeking comments on gaps in the measure set that fall into four categories: cognitive function, behavioral and mental health, resident experience and satisfaction, and chronic conditions and pain management.

ARN recommends that CMS consider the implementation of documentation to signify that the prescription of an antipsychotic medication is used only after exhausting all alternative approaches for patients. With this, CMS should reevaluate the use of off label antipsychotics for people with major depression uncontrolled with traditional antidepressants. F757 (formerly known as F-329) is a regulatory tag used by the Centers for Medicare and Medicaid Services (CMS) to assess the compliance of skilled nursing facilities (SNFs) regarding the appropriate use of psychotropic medications. It is important to note that the requirements for use of antipsychotics, especially in dementia patients, are complicated. Therefore, ARN recommends that CMS consider documentation in the chart showing that all avenues have been exhausted prior to starting these medications.

Health Equity Update
ARN appreciates that CMS is continuing to consider stakeholder comments on improving equity in health care. CMS did not propose any new policies on health equity in this proposed rule; however, the agency is now seeking comments on the use of social determinates of health (SDOH) in creating new quality measures. ARN believes that incorporating SDOH in SNF quality measures will promote health equity by recognizing and addressing disparities in health outcomes among different populations. By considering SDOH in the measure set, SNFs can work to reduce disparities and promote equitable care for all patients while identifying and mitigating social and economic barriers that may contribute to health inequities.

It is important to note that there has been a huge uptick in discharging patients who require more services, yet even prior to COVID-19, urban programs, especially ones on the border towns of those that are rural, have closed due to lack of funds and volunteers and workers. Additionally, public transportation is a significant factor and patients have difficulty accessing it as bus stations are being moved further from high need areas. It is difficult for patients who want to take charge of their health to get to a healthcare provider if they can't access a ride. For these reasons, CMS should incorporate SDOH in SNF quality measures because these factors do impact patient care.

Skilled Nursing Facility Value-Based Purchasing Program (SNF VBP)

In this proposed rule, CMS is proposing the adoption of four new quality measures, the replacement of one quality measure, and several policy changes in the SNF VBP Program. ARN believes that to achieve quality SNF care, CMS must continue to review and implement additional value payment arrangements and quality measures. However, we do not believe that the time is right for the several of the new measures in the SNF VBP program,

- ARN supports the inclusion of the Nursing Staff Turnover Measure for the SNF VBP program to work to ensure adequate staffing in long-term care settings. This is a structural measure that has been collected and publicly reported on Care Compare and assesses the stability of the staffing within an SNF using nursing staff turnover. Nurses who work in SNFs have to perform assessments without high technologically advanced equipment, and some have to provide their own supplies, such as blood pressure cuffs. This measure would assess the stability of nursing staff within an SNF and incentivize SNFs to prioritize staff retention and stability, ultimately ensuring consistent and high-quality care for residents. ARN believes nurses should be acknowledged for their skills and receive adequate and appropriate reimbursement. Moreover, it is important to note that SNFs have a significant loss/turnover of staff due to musculoskeletal injuries (MSI) that are preventable. Consequently, ARN recommends that CMS encourage resources and technology to minimize staff and patient injuries that are preventable.
- For the reasons stated above, ARN does not support the adoption of the Discharge Function Score measure.
- ARN supports CMS' proposal to replace the Skilled Nursing Facility 30-Day All-Cause Readmission Measure (SNFRM) with the Skilled Nursing Facility Within Stay Potentially Preventable Readmissions (SNF WS PPR) measure. There are many factors which can be patient specific as to why someone returns (unplanned) to the hospital.
- ARN supports CMS' proposal to adopt a Health Equity Adjustment in the SNF VBP Program that rewards SNF that perform well and whose resident population during the applicable performance period includes at least 20 percent of residents with dual eligibility status. We believe this is a great incentive and urge CMS to implement this proposal.

As we mentioned in our comments on the SNF QRP, ARN urges CMS to take the current and future workforce shortages in SNFs into consideration when implementing new measures. Additionally, ARN continues to seek clarification about how CMS plans to use the data collected through the SNF QRP and VBP. SNFs dedicate a lot of time and effort to comply with data collection and reporting requirements, which contributes to excessive administrative burden. We recognize that data collected through the SNF QRP and VBP can be extremely valuable and utilized for research and the development of evidence-based policies and practices; however, data collection and reporting takes time away from patient care and ultimately impacts workforce burden and burnout. Therefore, ARN encourages CMS to provide more details around the data collection and how the data will be used, and to consider the burden reporting on an already depleted workforce.

Thank you again for the opportunity to provide comments on this proposed rule. If you have any questions, please contact ARN's Health Policy Associate, Jeremy Scott at jscott@dc-crd.com. We thank you for your consideration of our comments.

Sincerely,

President Maria Radwanski, MSN, RN, CRRN