GREATER NEW YORK HOSPITAL ASSOCIATION
PRESIDENT, KENNETH E. RASKE • 555 WEST 57TH STREET, NEW YORK, NY 10019 • T (212) 246-7100 • F (212) 262-6350 • WWW.GNYHA.ORG

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The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1779-P
P.O. Box 8016
Baltimore, MD 21244-8016

Dear Ms. Brooks-LaSure,

On behalf of the more than 50 not-for-profit and public free-standing and hospital-based nursing homes that comprise the continuing care membership of the Greater New York Hospital Association (GNYHA), I appreciate the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) proposed rule for the fiscal year (FY) 2024 skilled nursing facility (SNF) prospective payment system (PPS) and related programs. Our comments focus on CMS's proposed updates to the Federal payment rates, including recommendations on supplementing the market basket index with additional data to account for ballooning labor costs that lead to continued and persistent financial challenges across the industry. We also include comments on other topics, including quality reporting program (QRP) measurements and proposed additions to the SNF value-based payment (VBP) programs.

If you have any questions or would like further details on GNYHA's recommendations, please contact Joe Corwin (212-506-5453/jcorwin@gnyha.org) or Scott Gaffney (212-258-5369/sgaffney@gnyha.org).

Thank you for considering our recommendations.

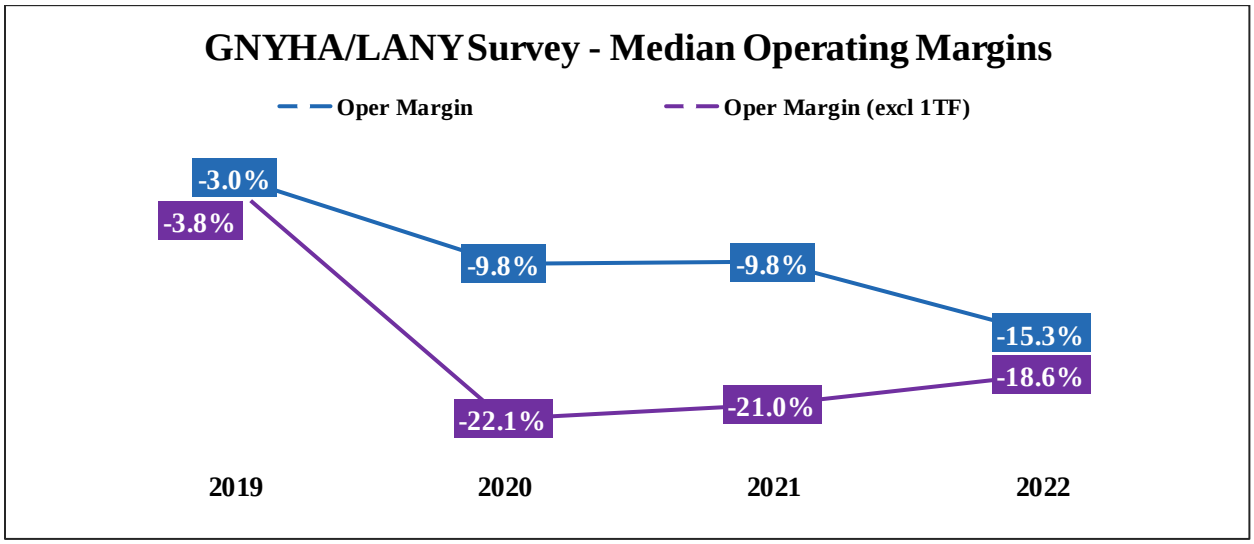
Sincerely,

Elisabeth R. Wynn
Executive Vice President, Health Economics & Finance

§ III.B.1. SNF Market Basket Index

In FY 2024, CMS proposes a 2.7% market basket increase. Unfortunately, continued wage and labor constraints have created unique expenditure mixes and unsustainable cost growth that do not mirror pre-pandemic trends, and GNYHA believes the proposed market basket increase does not account for these trends. CMS's FY 2024 SNF PPS's 3.6% forecast error adjustment indicates the projected market basket update in FY 2023 grossly underestimated nursing home labor costs and rising inflation. As wages and benefits drive total labor share growth, GNYHA believes that the 2018 market basket alone no longer serves as an appropriate price proxy due to the growing expenditures in labor. CMS's proposed market basket increase does not reflect nursing homes' financial needs due to growing wage and benefit costs, which have driven a recent disproportionate increase in the labor share portion of the market basket.

GNYHA and LeadingAge New York (LANY) recently conducted a joint finance survey assessing the financial and operational challenges from 2019-22 across not-for-profit nursing homes in New York State. During this period, operating margins for reporting not-for-profit and public nursing homes decreased from -3.8% in 2019 to -18.6% in 2022 when excluding one-time Federal funding (1TF) and decreased from -3.0% in 2019 to -15.3% in 2022 when including 1TF.



New York nursing homes' decreasing operating margins exemplify the continued financial challenges of New York not-for-profit nursing homes following the COVID-19 pandemic and the vital need for increased financial support in the upcoming years.[1]

The survey also found that contracted staffing costs for all staff grew by 66% since 2020, with contracted nursing costs increasing by 209% over the same period and by nearly 300% since 2019.[1] These costs mirror trends seen throughout the country. As noted in a recent Marcum LLP analysis, "the national hourly rate

[1] (GNYHA/LeadingAge New York Joint Financial Survey Fact Sheet, 2023)

for contract registered nurses increased by 19% compared to pre-COVID. Wages for contract licensed practical nurses and certified nurse aides also increased 22% and 27%, respectively, in comparison to pre-pandemic hourly rates."[2] Looking forward, 90% of survey respondents anticipate higher operating expenses in 2023, and three out of five respondents forecast similar or lower operating revenue over the same period. The combination of lower revenues with increased expenses will further worsen nursing homes' financial positions into upcoming years.

Due in large part to the national labor shortage, many New York health care providers, including nursing homes, recently reached new three-year wage agreements with 1199-Services Employees International Union (1199-SEIU) and the New York State Nurses Association (NYSNA). These labor agreements, which cover nursing, ancillary, and support staff, will have a cascading effect on the labor market by considerably increasing nursing homes' wage and benefit costs. GNYHA estimates that these various labor settlements will increase not-for-profit nursing homes' 1199-SEIU and NYSNA union staff costs by roughly 20% by 2025, excluding any continued rise in contract staffing costs. The increased wage and benefit costs add to nursing homes' financial challenges since the agreements impact many different staff types working in the nursing homes. Given the potential ripple through to other non-union staff, GNYHA also expects nursing home wage and benefit expenses to further increase over subsequent years.

Lower occupancy rates are also creating financial strain on nursing homes. New York State nursing homes' average occupancy rate during the first quarter of 2023 was approximately 86%, a reduction of 6% from the prior year and 10% from pre-pandemic levels.[3] Lower occupancy rates contribute to existing financial stressors and are in part accelerating the rate at which not-for-profit nursing homes are either closing or being sold to for-profit nursing homes. Since 2014, more than 75 New York not-for-profit nursing and public nursing homes have either been sold to for-profit operators or closed, including eight since the onset of the COVID-19 pandemic. These trends, without adequate market basket and rate updates, will continue to impact the ability of not-for-profit nursing homes to continue providing mission-driven care to the most vulnerable communities in New York.

Despite the rate of growth in the Consumer Price Index decreasing in April 2023 to 4.9%, core inflation remains high and continues to burden the nursing home wage, labor, and reimbursement landscapes.[4] Given the increasing labor costs, reduced occupancy, and continued inflationary pressures, **GNYHA believes the proposed 2.7% market increase inadequately addresses these challenges and recommends that CMS use more recent and supplemental labor cost data to accurately reflect a recent increase of the market basket's labor to ensure SNFs can afford to provide quality care to their communities.**

§ III.B.3. Forecast Error Correction

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[2] Marcum LLP, Three Year Nursing Home Statistical Analysis. https://info.marcumllp.com/hubfs/pdf/marcum-three-year-nursing-home-statistical-analysis-2019-2021.pdf?hsLang=en. 2019.

[3] New York State Department of Health Weekly Bed Census Data: Beginning 2009. https://health.data.ny.gov/Health/Nursing-Home-Weekly-Bed-Census-Beginning-2009/uhyy-xp9s. (Accessed May 10, 2023).

[4] (WSJ, 2022)

In the FY 2023 SNF PPS final rule, CMS updated its market basket projection from the proposed 2.8% update to 3.9% because of the 1.1% increase in growth between the quarter four 2021 and quarter one 2022 IHS Global market basket projections. Despite CMS increasing the FY 2023 market basket using more recent data, CMS proposes implementing a 3.6% forecast error adjustment in FY 2024 to adjust for the inaccurate market basket projection in FY 2023.

Both GNYHA's FY 2023 and FY 2024 SNF PPS proposed rule market basket comments raise concerns about how the current market basket accounts for the growing labor costs and inflation. In addition, GNYHA requests that CMS include additional data to prospectively adjust the market basket, especially during periods with significant inflation and labor cost growth, as experienced over the past two years. GNYHA believes that this is imperative to maintain not-for-profit nursing home operations, as not-for-profit nursing homes struggle with negative and unsustainable operating margins. For some not-for-profit nursing homes, retroactive adjustments may be too little too late.

GNYHA supports CMS's 3.6% forecast error adjustment in FY 2024 but recommends that CMS strongly consider including additional labor and cost data into the market basket updates prospectively, rather than retroactively, to adjust for the market basket projections' inability to accurately project rate increases during high inflation periods.

§ VI SNF Quality Reporting Program Quality Measure Proposals

Background

CMS requests comments in multiple QRP areas, such as selecting and prioritizing SNF QRP quality measures under consideration for future years, including available data to measure cognitive function. SNF patients presenting with behavioral health and substance use disorders have grown in recent years, and CMS recognizes the limited data available to identify these patients.

Principles for Selecting and Prioritizing SNF QRP Quality Measures and Concepts Under Consideration for Future Years Request for Information

CMS requests information in three areas associated with the SNF QRP program, including whether to update its principles for selecting measures, how to address the identified gaps in behavioral health, resident satisfaction, and chronic condition measurement, and the availability of measures to implement to address these identified gaps.

GNYHA supports the existing four principles: actionability, comprehensiveness and conciseness, focus on provider responses to payment, and compliance with CMS statutory requirements and key program goals. Upon further research, **GNYHA recommends also incorporating heath equity as a principle of the QRP to ensure that proper measurement accounts for social determinants of health and other contributing factors to the health care of populations that nursing homes and other providers serve.**

In addition, GNYHA also recognizes the gaps in the SNF QRP measure set associated with cognitive function and information on mental status and substance use disorders. Of the numerous tools and assessments used to measure patients' functional status in these areas, tools, such as the Patient-Reported Outcomes Measurement Information Set (PROMIS) cognitive function forms and the PROMIS Neuro-QoL were developed for broad populations or to measure specific cognitive functions. Due to these tools'

original intention being outside of the measure scope, GNYHA recognizes how these tools may not translate to an immediate SNF QRP measure. In addition, CMS states that these tools and assessments have not been fully tested for validity and reliability related to the QRP program, and this would require additional testing to understand the impact of deriving quality measures from metrics within these tools.

GNYHA agrees with CMS that developing or identifying a measure to assess these conditions must be implemented in short order to appropriately measure improvement with the behavioral health population, especially as this population ages and will require more nursing home care. **GNYHA recommends that CMS perform feasibility, reliability, and validity testing on the CMS-identified metrics from existing tools to develop a proposed QRP metric that can accurately measure nursing homes' capabilities to care for this population.**

§ VII Value-Based Payment Program

Background

CMS proposes adding multiple new measures to its VBP program in upcoming years, including updating its existing potentially preventable readmission measure, adding new measures, and applying a health equity adjustment to improve scores of nursing homes that serve higher proportions of dual eligible patients. GNYHA makes multiple recommendations below regarding CMS's proposed additions in this area.

Transition to SNF Within-Stay Potentially Preventable Readmission from SNF Readmission Measure

CMS proposes to refine the current SNF 30-Day Potentially Preventable Readmission (PPR) measure to the SNF Within-Stay PPR measure (SNF WS PPRM) starting in the FY 2028 VBP program. The updated SNF WS PPRM measure closely aligns the measurement with the SNF PPR post-discharge measure in the SNF QRP and the within-stay PPR measure used in the Inpatient Rehabilitation Facility QRP. The updated measure remains like the existing PPR but changes the length of time allowed between a qualifying prior inpatient discharge and SNF admission from one day to 30 days, thus increasing the universe of SNF patients considered in the measure. Through its own analysis, CMS found a strong correlation between the updated measure and the existing PPR measure suggesting that the updated measure will continue to appropriately measure nursing homes' performance in reducing readmissions.

GNYHA recognizes that the potentially preventable diagnosis related to the readmission is the potentially preventable element to this measure; however, this longer transition window may impact nursing homes' ability to prevent the condition if it first develops outside of the nursing home during this transitionary period. GNYHA believes that these added days between the hospital inpatient stay and SNF admission can increase the potential for factors outside of the hospital or nursing home's control to influence a patient's condition prior to the admission to the nursing home.

GNYHA recommends that CMS continue to measure the correlation between the current SNF PPR and SNF WS PPRM in the upcoming years and better evaluate how this transitionary period impacts the conditions patients present with upon nursing home admission prior to adopting the measure.

Number of Hospitalizations per 1,000 Long-Stay Resident Days Measure

CMS proposes to adopt the number of hospitalizations per 1,000 long-stay resident days measure beginning with the FY 2027 SNF VBP program. GNYHA recognizes the importance of measuring the long-stay population's hospitalizations despite Medicaid being the primary payer of this population during its nursing home stay.

GNYHA participated in CMS's Initiative to Reduce Avoidable Hospitalizations among Nursing Facility Residents that ran from 2012 to 2020 and focused on long-stay nursing home residents. One of the challenges in evaluating the impact of the interventions in this program was the relatively small denominators of individuals among the participating groups, which, as stated by the evaluator RTI International, "small changes in percentage points or counts can result in large relative percent changes when the denominators are small."[5] In addition, GNYHA's experience at the facility-level for changes in hospitalizations illustrated similar fluctuations in rates due to small denominators. In analyzing the long-stay rates for New York nursing homes from 2021 to 2023, the average *expected* rate of hospitalizations per 1,000 long-stay resident days has decreased by 21% to 1.63 hospitalizations per 1,000 long-stay resident days. The decrease suggests the improvement that New York State nursing homes have made in reducing hospitalizations for this population. However, with this decrease in the expected rate, it has become more difficult for New York State to perform better than the expected rate. In 2021, more than 80% of New York State nursing homes performed better than expected, but in 2023, just over 50% of nursing homes performed better than expected.

The combination of lower expected rates and the impact that small denominators can have on observed hospitalization rates can inhibit an SNF's ability to continuously reduce this rate below its lower expected rate. Considering these factors, **GNYHA recommends that CMS continue to monitor the decreasing expected rates of hospitalizations for long-stay residents and determine whether this metric remains an appropriate measurement of a nursing home's ability to properly care for and reduce hospitalizations for the long-stay population.**

Proposal to Adopt the Total Nursing Staff Turnover Measure for the FY 2026 SNF VBP Program

In January 2022, CMS began publicly reporting on SNF staffing turnover on its Care Compare tool and incorporated this measure into the nursing home five-star rating system in July 2022.

Over the past several years, SNFs, like other health care providers, have struggled mightily to retain quality nursing and other professional staff amidst worker burnout, vaccine mandates, staffing shortages, and labor cost increases. These trends have slightly accelerated over the past year, and strategies related to hiring and retaining nurses have changed dramatically.

Based on the most recent calendar quarter Care Compare SNF staffing turnover data, GNYHA members reported an average 34.8% total nurse staff turnover rate compared with a 53.5% national total nursing turnover rate illustrating GNYHA members' focus on retention and continuity of care. GNYHA members

[5] Evaluation of the Initiative to Reduce Avoidable Hospitalizations among Nursing Facility Residents – Payment Reform.(https://innovation.cms.gov/data-and-reports/2021/pah2-nfi2-ar4-main-report). Last accessed 5/25/2023.

also reported a 46.6% registered nurse turnover rate compared with a 51.9% national registered nurse turnover rate. GNYHA members recognize the importance of staff retention and its impact on patient care, which serves as the foundation of GNYHA members' missions.

As CMS has identified retaining staff as an integral component of an SNF's ability to provide quality care to its residents, GNYHA supports adding the Total Nursing Staff Turnover measure to the FY 2026 SNF VBP program.

Proposal to Implement the Discharge to Community (DTC) Post-Acute Care (PAC) Measure for the FY 2027 SNF VBP Program

The DTC – PAC measure for SNFs measures successful discharges to the community from an SNF setting by using two years of Medicare fee-for-service claims data. Currently used in the SNF QRP measure set, this measure addresses an important factor for patients returning to a previous living situation and avoiding institutionalization. GNYHA recognizes the importance of this measure as its members tirelessly work to return patients to their previous living condition, as demonstrated by nearly 90% of GNYHA members that perform the same as or better than the national average on this measure in the QRP program. Despite its members' success and as stated in its FY 2023 SNF PPS comments, GNYHA strongly suggests that CMS continue to monitor how SNFs that care for large homeless and undomiciled populations are impacted by this measurement and offers to work with CMS to better understand the population's impact. Not-for-profit and public SNFs provide mission-driven care, and these populations are a large part of that mission.

GNYHA supports the inclusion of this measure in FY 2027, allowing SNFs enough time to evaluate their current performance and incorporate any operational processes necessary for the adoption of this measure in VBP.

§ VII.E Proposal to Incorporate Health Equity into SNF VBP Program Scoring Methodology in FY 2027 SNF VBP Program

CMS identifies health equity as a major emphasis point in its strategy to improve the health of Medicare patients. GNYHA recognizes the importance of incorporating health equity measurement to appropriately account for social determinants of health and measure how they impact patients as well as providers' ability to treat and improve patient care.

CMS proposes applying an adjustment (increase in points) to the sum of an SNF's VBP program total points to reward SNFs that care for a larger population of patients with dual eligible status (DES). CMS states in the proposed rule that DES SNF patients are more medically complex and are more frequently admitted to SNFs with higher proportions of Medicaid patients, which serves as the basis to positively adjust VBP scores for nursing homes with more DES patients. In 2021, Medicaid paid for almost 70% of nursing home patient days making it by far New York nursing homes' primary payer. A recent GNYHA analysis found that not-for-profit and public New York nursing homes, which care for many Medicaid-only patients, had a lower proportion of DES patients than New York for-profit nursing homes. Around 65% of for-profit nursing homes' stays came from DES patients versus just above 50% at not-for-profit nursing homes. In 2021, for-profit nursing homes' average operating margins, excluding one-time Federal funding, was 1%

versus -15% for not-for-profit nursing homes. By implementing this adjustment, CMS may unintentionally increase the financial disparity that exists between for-profit and not-for-profit nursing homes by rewarding for-profit nursing homes with higher DES percentages and not rewarding not-for-profit nursing homes that care for more Medicaid-only patients.

As noted in the proposed rule, CMS acknowledges that there are other potential metrics, such as the low-income subsidy identifier, that CMS can use to adjust the VBP program scores for heath equity, but the research into these alternate options is limited, especially in the SNF setting. CMS states that the current DES methodology is the best option, but further research into these adjustments is planned and required to ensure the adjustment appropriately addresses CMS's intentions. **GNYHA recommends that CMS delay implementing a health equity adjustment using DES patients until the completion of further research into the alternative metrics.**