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National Hospice and Palliative Care Organization

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November 17, 2020

Alex M. Azar
Secretary
US Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20101

Re: Provider Relief Fund Reporting Guidance

Dear Secretary Azar:

On behalf of the National Hospice and Palliative Care Organization (NHPCO), I thank you for your continued leadership in keeping Americans safe and supporting our health care providers as we face the coronavirus pandemic together. NHPCO is the largest membership organization representing the entire spectrum of hospice and palliative care programs and professionals in the United States. NHPCO is comprised of over 4,000 hospice locations with more than 57,000 hospice staff and volunteers, as well as 48 state hospice and palliative care organizations. We appreciate your ongoing collaboration with the hospice and palliative care community in responding to the COVID-19 public health emergency.

Provider Relief Fund (PRF) payments have served as an essential resource to hospices that have worked tirelessly to provide care uninterrupted through the COVID-19 pandemic. Hospice providers are extremely grateful for this support, which has facilitated the ability for patients and their families to receive high quality hospice care during an extraordinarily difficult period. Of specific concern is the difference in the definition of lost revenue in the June 19, 2020 guidance and the definition of lost revenue in guidance issued on September 19 and October 22, 2020. The guidance issued by HHS on June 19, 2020 defined lost revenue as "any revenue that... a health provider lost due to coronavirus." For many hospice providers in particular, that lost revenue includes lost patient care revenue, but also includes both fundraising and special events revenue as well as revenue from thrift store sales, used to support patient care and expansion of services in the community. A clarification is necessary. In our letter to Secretary Azar on October 8, we state:

> "Hospice providers rely on both fundraising and direct donations to fund and budget for patient care. During the COVID-19 pandemic, many hospices and their foundations have had to cancel fundraising events or switch to virtual fundraising events, incurring

significant losses to an important revenue source for patient care. Accordingly, NHPCO requests that HHS clarify that PRF payments may be used to reimburse fundraising revenue that was lost in 2020 or 2021 by PRF recipients or their foundations and that would have been used to fund the PRF recipients' patient care."

Reporting Guidance Inconsistent with CARES Act and With Other Guidance. HHS's PRF reporting guidance from September 19, 2020 does not explicitly identify lost fundraising and thrift store revenue as reimbursable. The revised guidance issued on October 22 makes some adjustments in the calculations of lost revenue but does not include fundraising and thrift store revenue as lost revenue. The CARES Act and HHS's PRF Terms and Conditions broadly authorize PRF payments to be used for *lost revenues* attributable to the coronavirus, and do not impose such additional constraints as requiring that the lost revenues be lost *patient care* revenues. Indeed, there was no indication that HHS was imposing this additional constraint until the September reporting guidance was released.

> **NHPCO Request:** In light of the inconsistency between the current October 22, 2020 guidance and Congressional authorization and previous HHS guidance regarding lost revenue, HHS should clarify that "lost revenue" include lost fundraising and thrift store revenues, as indicated in the original PRF guidance dated June 19, 2020.

NHPCO believes that HHS could take two approaches to account for the inclusion of lost fundraising and thrift store revenue to be considered as lost revenue.

1. **HHS Should Not Limit Reimbursable Lost Revenue to Lost "Patient Care" Revenue.** In HHS's current reporting guidance, reportable lost revenue is limited to "revenue/net charges from patient care." However, as discussed above, this limitation is inconsistent with the CARES Act and with prior HHS guidance and also ignores that hospices and other providers rely on fundraising and thrift store revenues to fund and budget for patient care. Accordingly, HHS should revise its November 2, 2020 reporting guidance to allow PRF recipients to report *any* lost revenues attributable to coronavirus (and as otherwise permitted under the applicable Terms and Conditions), not just those lost revenues that are "patient care" revenues.

2. **HHS Should Clarify That Lost Fundraising and Thrift Store Revenue Can Be Lost "Patient Care" Revenue.** In the alternative, if HHS proceeds with allowing the PRF to reimburse only lost *patient care* revenues, HHS should clarify that lost fundraising and thrift store revenues can be considered lost "patient care revenue" for purposes of reporting lost revenue. In the current reporting guidance, one of the seven "patient care revenue" categories that PRF recipients can use to calculate lost patient care revenue is a catch-all "Other" category that includes "[a]ctual gross revenues/net charges from *other sources received for patient care services*" (emphasis added). HHS should make clear that 2019-2021 fundraising and thrift store revenues can be reported in this "Other" category to the extent such revenue was used "for patient care services" (*i.e.*, to fund the PRF recipient's patient care). As part of this request, HHS at a minimum should remove

that part of Footnote 5 of the reporting guidance that excludes “retail” and “grants” from the definition of patient care revenue.

<u>Importance of Fundraising to Hospice.</u> Unlike many other Medicare provider types, hospices rely on fundraising support to fund and expand hospice and palliative care services, support programs for children and bereavement support in the community. These fundraising activities may be conducted by the hospice or through separate but related legal entities (*e.g.*, foundations, parents, or subsidiaries). The operation of hospice thrift stores is also a source of fundraising revenue. We share a representative sample of stories from hospice providers impacted by the loss of fundraising and thrift store revenue.

1. **Hospices Lost Revenue Due to Thrift Store Closings:** One hospice has 5 thrift stores throughout northern California, which provide patient care services for uninsured patients, as well as bereavement support in the community. Another has a thrift store that provides additional support for patients in need at a hospice facility. The stores have been closed due to COVID and are now open three days per week. In one case, fundraising losses are more than $100,000 per month. In another case, the hospice facility, supported by thrift store revenue in addition to other patient care revenue, will close at the end of December unless new sources of funding are found. If the hospices can count these losses as lost revenue for PRF reporting, they will be able to further minimize their losses and continue to provide patient care.

2. **Hospices Lost Revenue Due to Cancelled Fundraising Events:** Hospices report that fundraising events have been cancelled or converted to virtual events with significant decreases in fundraising revenue. Some hospices report that donors are diversifying their donations to other areas of the community during COVID, reduced their gift, or have withdrawn their support altogether. If the hospice can count these losses as lost revenue for PRF reporting, they will be able to better able to give a full accounting of lost revenue due to the COVID-19 public health emergency.

Thank you for your consideration to amend the reporting requirements and release clarifying guidance regarding lost revenue. We welcome the opportunity to discuss our requests with you. You or your staff should reach out to Hannah Yang Moore, Chief Advocacy Officer, at hmoore@nhpco.org with questions or to schedule a meeting. We look forward to continued collaboration with the Administration to strengthen the US healthcare system and to serve patients and families during this public health emergency.

Sincerely,

Edo Banach, JD
President and CEO