

May 20, 2020

Honorable Alex M. Azar II
Secretary
Health and Human Services Department
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

Re: COVID-19 Emergency Declaration—Blanket Waivers for Health Care Providers

Dear Secretary Azar:

On behalf of the undersigned organizations, we are concerned that the Centers for Medicare and Medicaid Services' (CMS) recent waiver of the regulation that requires hospitals, including critical access hospitals, to inform patients about their advance directive policies¹ will negatively impact patient-directed care. While we recognize the need to address the shortage of healthcare resources, we can do it in a far more advisable, humane and politically palatable manner: by educating and empowering patients to make their own end-of-life care decisions. We urge you to rescind the waiver of the regulation requiring providers to inform patients about advance directives, and instead issue guidance encouraging providers and clinicians in federally-funded programs, with the exception of hospitals, to use telehealth technology to offer their patients the opportunity to engage in an advance care planning discussion.

Now, more than ever, individuals need to engage in informed discussions about what end-of-life care they want or don't want if they get seriously ill and who will make health care decisions on their behalf if they are unable to do so. Only approximately one in three of the nation's adults are documented to have completed an advance directive,² leaving too many physicians and family members in the midst of this pandemic to make last minute, agonizing, life-and-death decisions for an individual.³ If hospitals are not required to inform patients of their advance directive policies, who knows whether these advance directives will even surface or be honored.

CMS is able to take four immediate actions that support patient-directed care:

¹ CMS, COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers, April 21, 2020, www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf.

² Yadav, Kuldeep N. et al., *Approximately One in Three US Adults Completes and Type of Advance Directive for End-Of-Life Care*, Health Affairs, July 2017
www.healthaffairs.org/doi/10.1377/hlthaff.2017.0175

³ *Doctors Worry They Will Be Forced Into Life-Or-Death Decisions Amid Virus Pandemic: "I'm Not God"*, CBS NEWS, April 8, 2020, <https://www.cbsnews.com/news/coronavirus-doctors-hospitals-life-or-death-decisions-pandemic/>.

- Reinstatement of the requirements under the Patient Self-Determination Act for hospitals to inform patients about their advance directive policies.
- Issue guidance to urge physicians to offer their patients advance care planning visits available via telehealth through Medicare and other federal healthcare programs.
- Allow electronic authentication of advance directives for certifying patient wishes.
- Urge clinicians to utilize advanced care planning tools that address COVID-19 realities

Research studies and clinical practice demonstrate when patients have open and honest conversations with their healthcare providers about available treatment options, the vast majority will choose to forgo invasive end-of-life treatments. When asked, many patients will self-select out of invasive and futile care, rather than hospitals and doctors having to ration it. Given this fact, rather than waiving requirements that hospitals inform patients of their advanced directive policies, we urge that you support widespread adoption of advance care planning. If you have questions, please contact Sylvia Trujillo, Policy Director/Senior Legislative Counsel, Compassion & Choices, strujillo@compassionandchoices.org, (971) 219-6135.

Sincerely,

Compassion & Choices

American Federation of Teachers

Atheists United

Clearinghouse on Women's Issues

Elder Justice Coalition

MANA, A National Latina Organization

National Adult Day Services Association (NADSA)

National Association of Social Workers

National Hispanic Medical Association

National Latinx Psychological Association

PFLAG National

SER-Jobs for Progress National Inc.

United States Hispanic Leadership Institute, Inc.