

August 27, 2010

Donald M. Berwick, MD, MPP, FRCP
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

RE: CMS-1504-P: Medicare Program: Proposed Changes to the Hospital Outpatient PPS and CY 2011 Payment Rates

NOTE: “PARTIAL HOSPITALIZATION” and “PHYSICIAN SUPERVISION” COMMENTS

Dear Dr. Berwick,

As an association representing community behavioral healthcare provider organizations, the National Council for Community Behavioral Healthcare (National Council) appreciates the opportunity to provide comments on the proposed rule titled “Medicare: Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2011 Payment Rates....” as published in the August 3, 2010, *Federal Register*.

We are specifically providing comments on the proposed **partial hospitalization** payment rates.

ABOUT THE NATIONAL COUNCIL

The National Council is the unifying voice of America’s behavioral health organizations. Together with our 1,700 member organizations, we serve our nation’s most vulnerable citizens — more than 6 million adults and children with mental illnesses and addiction disorders. We are committed to providing comprehensive, quality care that affords every opportunity for recovery and inclusion in all aspects of community life.

The National Council advocates for policies that ensure that people who are ill can access comprehensive healthcare services, and we offer state-of-the-science education and practice improvement resources so that services are efficient and effective.

“OPPS: PARTIAL HOSPITALIZATION” COMMENTS

The National Council strongly opposes the proposed exclusion of hospital costs from the calculation of APC rates for partial hospitalization services furnished by community mental health centers (CMHCs).

We urge CMS to reconsider its proposed exclusion of hospital costs from the calculation of APC rates for partial hospitalization services furnished by CMHCs. Excluding hospital costs in this calculation is contrary to the express terms of the Social Security Act of section 1833(t)(2)(B) and CMS's regulation interpreting that statute, 42 C.F.R. § 419.31(b)(1).

Section 1833(t)(2)(B) requires that:

the Secretary shall, using data on claims from 1996 and using data from the most recent available cost reports, establish relative payment weights for covered OPD services (and any groups of services . . .) *based on medical . . . hospital costs*

CMS has interpreted this statute to require the use of *hospital* outpatient claims data and data from the most recent available *hospital* cost reports in determining the median costs for the services and procedures within each APC group.¹ No other sources of data are referenced in the statute. Thus, the calculation of national APC rates under HOPPS requires the use of *hospital* costs.

As is evident in prior preambles establishing APC payments for partial hospitalization under HOPPS, there is no question that these authorities apply to the calculation of APC rates for partial hospitalization services furnished by hospital-based partial hospitalization programs and by CMHCs. The authorities, therefore, require the use of hospital costs in determining APC rates for partial hospitalization services furnished by both of these types of providers. CMS does not have discretion under the statute to exclude hospital data from the calculation of APC rates for CMHC providers. On this basis alone, finalizing the proposed payment methodology for partial hospitalization services would be contrary to the Social Security Act.

Therefore, the National Council urges CMS to continue to calculate partial hospitalization APCs based solely on hospital costs, as required by the statute.

Because the proposed reimbursement structure reduces payment for CMHCs by 42 percent in a single year, we recommend that CMS consider a phase-in of the rate reduction as it has done in the face of significant changes to other payment rates.

“PHYSICIAN SUPERVISION” COMMENTS

We appreciate the opportunity to discuss physician supervision issues in the 2010 proposed rule.

Physicians are an integral and regular physical presence in partial hospitalization programs. They are readily available for consultation, face-to-face evaluations, and program oversight. Programs have well-defined procedures for handling medical and psychiatric emergencies.

The further clarification of physician supervision and the addition of other types of professionals capable of providing supervision will significantly assist program services across the country and particularly in rural areas.

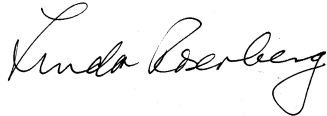
¹ 42 C.F.R. § 419.31(b)(1).

Comment on Section 1301 of the Affordable Care Act (ACA)

The ACA specifies that a CMHC provide at least 40 percent of its services to individuals who are not eligible for Medicare benefits under Title XVIII of the Act. The National Council urges CMS to issue guidance regarding this provision and further, requests that this guidance stipulate that the 40% threshold applies to all clients treated by the CMHC, regardless of the specific treatment modality.

Thank you for your consideration of our comments. We look forward to working with CMS and the Department of Health and Human Services to ensure that Medicare beneficiaries continue to have access hospital outpatient mental health and partial hospitalization services.

Sincerely,

A handwritten signature in cursive script that reads "Linda Rosenberg".

Linda Rosenberg, MSW
President and CEO