

August 27, 2009

Ms. Charlene Frizzera, Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW, Room 445-G
Washington, DC 20201

RE: CMS-1414-P: Medicare Program: Proposed Changes to the Hospital Outpatient PPS and CY 2010 Payment Rates

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

Dear Ms. Frizzera,

As an association representing community based behavioral healthcare provider organization, 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 2010 Payment Rates” as published in the July 20, 2009, *Federal Register*.

We are specifically providing comments on the proposed partial hospitalization payment rates and physician supervision.

ABOUT THE NATIONAL COUNCIL

The National Council is the unifying voice of America’s behavioral health organizations. Together with our 1,600 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 supports 1) the proposed PHP rates for CY2010 and 2) the two-tiered payment structure for PHP payments outlined in the proposed rule.

We strongly urge CMS to continue the two payment structure for partial hospitalization (with high- and low-intensity rates) and to use only hospital data for determining rates because the hospital data is reliable, predictable, and national in scope.

“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.

We strongly support the proposal made in the 2010 outpatient prospective payment system proposed rule that would allow non-physician practitioners (specifically physician assistants, nurse practitioners, clinical nurse specialists, and certified nurse-midwives) to directly supervise all hospital outpatient therapeutic services that they may perform themselves in accordance with the provisions outlined in the proposed rule. We think it is appropriate that professionals be permitted to provide incident to supervision for the services they can perform independently.

We recommend that licensed clinical social workers be added to the group of non-physician practitioners who may supervise the outpatient therapeutic services that they may perform themselves in accordance with the provisions outlined in the proposed rule. Under current regulations, clinical social worker services are covered by Part B as services that would be covered if furnished by a physician.

Our Concerns and Recommendations on Physician Supervision

While we welcome the addition of non-physician providers as professionals who may directly supervise services they may perform themselves, we also want to explore clinically appropriate ways for a physician or Nurse Practitioner in Psychiatry (NPP) to provide supervision of outpatient services based on the nature of the therapeutic service being provided.

We believe the intent of direct physician supervision (the requirement that the physician be *immediately available*) can be met by a physician or NPP being immediately available by phone (or other appropriate forms of communication) at all times the therapeutic service is being provided and physically available within a defined timeframe, based on the care being delivered. Hospitals would be responsible for using their internal policy and procedure development and

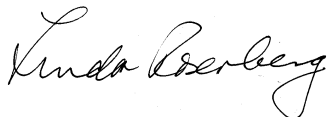
approval process to define the specific requirements of this availability as Medicare requires in other areas.

We recommend that CMS undertake a thorough evaluation of the supervision requirements for incident to services. The current definitional confusion (as well as the significant concern from the field that the proposed rule does not adequately resolve the confusion) cannot be ignored. Our constituents are telling us that direct physician supervision is not the clinically appropriate standard for the therapeutic services they provide. Further, conforming with the proposed levels of supervision would make it impossible to continue to provide the beneficiary access that currently exists because supervising professionals are not available in adequate numbers to provide direct supervision of services that do not require that level of involvement. CMS has significant regulatory flexibility available to design a supervision model that would provide both safe and accessible services without compromising either value. We suggest that CMS develop a process (clinically informed and submitted for public comment) that would lead to the identification of the appropriate level of supervision necessary for specific clinical services.

There is no demonstrated evidence that direct physician supervision at all times would enhance a program of services designed (and required by regulation) to be carried out by an interdisciplinary team of highly qualified professionals. The cost structure has been very thoroughly studied and set based on the general physician supervision standard.

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 black ink that reads "Linda Rosenberg". The signature is written in a cursive, flowing style.

Linda Rosenberg, MSW
President and CEO