



September 8, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
ATTN: CMS-1784-P
7500 Security Blvd.
Baltimore, MD 21244-1850

Re: CMS-1786-P: Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs; Payment for Intensive Outpatient Services in Rural Health Clinics, Federally Qualified Health Centers, and Opioid Treatment Programs; Hospital Price Transparency; Changes to Community Mental Health Centers Conditions of Participation, Proposed Changes to the Inpatient Prospective Payment System Medicare Code Editor; Rural Emergency Hospital Conditions of Participation Technical Correction

Dear Administrator Brooks-LaSure:

We provide the feedback set forth in this letter regarding the proposed regulations to implement Medicare payment under Medicare Part B for services provided by licensed marriage and family therapists (MFTs) and licensed mental health counselors (MHCs) as it applies to the Hospital Outpatient Prospective Payment (HOPPS) Proposed Rule.

The National Board for Certified Counselors and Affiliates (NBCC) appreciates the opportunity to comment on this proposed rule.

NBCC is the certification organization that provides national certification and the nationally normed examinations for state licensure for counselors. Our affiliate, the NBCC Foundation, leverages the resources of NBCC and Affiliates for capacity-building to expand mental health services in traditionally underserved and never-served communities and administers the Minority Fellowship Program (MFP) for counselors, provides community capacity grants, and facilitates community-based mental health education and stigma-reduction programs. NBCC maintains standards and processes that ensure that counselors who become certified have achieved appropriate standards of practice through education,

examination, supervision, experience, and ethical guidelines. Established as a not-for-profit, independent certification organization in 1982, NBCC has decades of commitment to expanding access to and utilization of mental and behavioral health services in communities across the globe. NBCC provides the examinations used for professional counseling licensure by all 50 states, Puerto Rico, Guam, and the Virgin Islands. These examinations include the National Counselor Examination (NCE) and the National Clinical Mental Health Counseling Examination (NCMHCE).

NBCC has reviewed the proposed Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Proposed Rule and provides the following comments:

Community Mental Health Centers Conditions of Participation

NBCC supports the recognition that MHCs and MFTs provide services in community mental health centers (CMHCs). However, in addition to the proposed areas for inclusion of these practitioners in the proposed modifications to the conditions of participation for CMHCs, we ask CMS to make the following additional modifications:

1. In 42 C.F.R. 485.916 (a)(1) and (3), we ask that MHCs and MFTs be specifically identified in the regulation as potential members of the CMHC interdisciplinary team so that they are on equal footing with clinical social workers.
2. In 42 C.F.R. 485.918(b)(1)(vi), we ask that the list of practitioners that may provide group psychotherapy specifically list MHCs and MFTs similarly to the other practitioners who may lawfully provide these services.

These changes will help to clarify that MHCs and MFTs may lawfully take their place on the CMHC interdisciplinary teams.

Exclusion of MFT/MHC Services from HOPPS Payment

For purposes of clarity about what MHC and MFT services are covered under different parts of Medicare, we request that CMS amend 42 C.F.R. 419.22 to include statements that MHC and MFT services are not included within HOPPS payments except when part of a bundled rate. This will help clarify Medicare payments for MHCs and MFTs.

Partial Hospitalization/Intensive Outpatient Services

We ask for the regulations concerning Medicare programs for partial hospitalization programs and intensive outpatient services be modernized to fully recognize the services of MHCs and MFTs in this setting. Accordingly, we ask that the following regulations be amended:

1. 42 C.F.R. 410.43(a)(4)(iii) should be amended to specifically reference that the services of MFTs and MHCs comprise a portion of partial hospitalization services.
2. 42 C.F.R. 410.44 should be amended to specifically reference the services of MFTs and MHCs in providing therapy services.

NBCC also commends CMS for proposing to pay for a new level of care—the “Intensive Outpatient Program” (IOP)—which can be performed by hospital outpatient departments, community mental health clinics, Federally Qualified Health Centers, Rural Health Clinics, or by Opioid Treatment Programs. This new benefit category could significantly expand access to behavioral health services for Medicare beneficiaries.

Increased availability of Medicare-funded intensive outpatient services will foster collaboration between behavioral health agencies and other mental health providers, thereby enhancing integrated approaches, improving coordination, and facilitating better patient outcomes.

Thank you again for all the efforts CMS has made to bring about these important legal changes to expand access to behavioral health services by allowing Medicare payment for MHC and MFT services. We are thrilled to be working in this field during this exciting time.

If we can provide any additional information to you for consideration of the additional changes highlighted in this letter, please contact me at dotson-blake@nbcc.org.

Sincerely,



Kylie P. Dotson-Blake PhD, NCC, LCMHC

President and CEO

National Board for Certified Counselors, Inc. and Affiliates