

WAYS AND MEANS COMMITTEE PRINT 117-2

Improvements to the Medicare Program Related to Physician Services and Education

1 **SECTION 1. COVERAGE OF MARRIAGE AND FAMILY THERA-**
2 **PIST SERVICES AND MENTAL HEALTH COUN-**
3 **SELOR SERVICES UNDER PART B OF THE**
4 **MEDICARE PROGRAM.**

5 (a) COVERAGE OF SERVICES.—

6 (1) IN GENERAL.—Section 1861(s)(2) of the
7 Social Security Act (42 U.S.C. 1395x(s)(2)) is
8 amended—

9 (A) in subparagraph (GG), by striking
10 “and” after the semicolon at the end;

11 (B) in subparagraph (HH), by striking the
12 period at the end and inserting “; and”; and

13 (C) by adding at the end the following new
14 subparagraph:

15 “(II) marriage and family therapist services (as
16 defined in subsection (lll)(1)) and mental health
17 counselor services (as defined in subsection
18 (lll)(3));”.

19 (2) DEFINITIONS.—Section 1861 of the Social
20 Security Act (42 U.S.C. 1395x) is amended by add-
21 ing at the end the following new subsection:

1 “(III) MARRIAGE AND FAMILY THERAPIST SERVICES;
2 MARRIAGE AND FAMILY THERAPIST; MENTAL HEALTH
3 COUNSELOR SERVICES; MENTAL HEALTH COUNSELOR.—

4 “(1) MARRIAGE AND FAMILY THERAPIST SERV-
5 ICES.—The term ‘marriage and family therapist
6 services’ means services furnished by a marriage and
7 family therapist (as defined in paragraph (2)) for
8 the diagnosis and treatment of mental illnesses
9 (other than services furnished to an inpatient of a
10 hospital and other than services furnished to an in-
11 patient of a skilled nursing facility) which the mar-
12 riage and family therapist is legally authorized to
13 perform under State law (or the State regulatory
14 mechanism provided by State law) of the State in
15 which such services are furnished, as would other-
16 wise be covered if furnished by a physician or as an
17 incident to a physician’s professional service.

18 “(2) MARRIAGE AND FAMILY THERAPIST.—The
19 term ‘marriage and family therapist’ means an indi-
20 vidual who—

21 “(A) possesses a master’s or doctor’s de-
22 gree which qualifies for licensure or certification
23 as a marriage and family therapist pursuant to
24 State law of the State in which such individual

1 furnishes the services described in paragraph
2 (1);

3 “(B) is licensed or certified as a marriage
4 and family therapist by the State in which such
5 individual furnishes such services;

6 “(C) after obtaining such degree has per-
7 formed at least 2 years of clinical supervised ex-
8 perience in marriage and family therapy;

9 “(D) in the case of an individual per-
10 forming services in a State that provides for li-
11 censure or certification of marriage and family
12 therapists, is licensed or certified as a marriage
13 and family therapist in such State; and

14 “(E) meets such other requirements as
15 specified by the Secretary.

16 “(3) MENTAL HEALTH COUNSELOR SERV-
17 ICES.—The term ‘mental health counselor services’
18 means services furnished by a mental health coun-
19 selor (as defined in paragraph (4)) for the diagnosis
20 and treatment of mental illnesses (other than serv-
21 ices furnished to an inpatient of a hospital and other
22 than services furnished to an inpatient of a skilled
23 nursing facility) which the mental health counselor
24 is legally authorized to perform under State law (or
25 the State regulatory mechanism provided by the

1 State law) of the State in which such services are
2 furnished, as would otherwise be covered if furnished
3 by a physician or as incident to a physician’s profes-
4 sional service.

5 “(4) MENTAL HEALTH COUNSELOR.—The term
6 ‘mental health counselor’ means an individual who—

7 “(A) possesses a master’s or doctor’s de-
8 gree in mental health counseling or a related
9 field which qualifies for licensure or certifi-
10 cation as a mental health counselor, clinical
11 professional counselor, or professional counselor
12 under the State law of the State in which such
13 individual furnishes the services described in
14 paragraph (3);

15 “(B) is licensed or certified as a mental
16 health counselor, clinical professional counselor,
17 or professional counselor by the State in which
18 the services are furnished;

19 “(C) after obtaining such a degree has per-
20 formed at least 2 years of clinical supervised ex-
21 perience in mental health counseling; and

22 “(D) meets such other requirements as
23 specified by the Secretary.”.

24 (3) AMOUNT OF PAYMENT.—Section 1833(a)(1)
25 of the Social Security Act (42 U.S.C. 1395l(a)(1)),

1 as amended by section 11101(b) of Public Law
2 117169, is further amended—

3 (A) by striking “and (EE)” and inserting
4 “(EE)”; and

5 (B) by inserting before the semicolon at
6 the end the following: “and (FF) with respect
7 to marriage and family therapist services and
8 mental health counselor services under section
9 1861(s)(2)(II), the amounts paid shall be 80
10 percent of the lesser of the actual charge for
11 the services or 75 percent of the amount deter-
12 mined for payment of a psychologist under sub-
13 paragraph (L)”.

14 (4) EXCLUSION OF MARRIAGE AND FAMILY
15 THERAPIST SERVICES AND MENTAL HEALTH COUN-
16 SELOR SERVICES FROM SKILLED NURSING FACILITY
17 PROSPECTIVE PAYMENT SYSTEM.—Section
18 1888(e)(2)(A)(ii) of the Social Security Act (42
19 U.S.C. 1395yy(e)(2)(A)(ii)) is amended by inserting
20 “marriage and family therapist services (as defined
21 in section 1861(III)(1)), mental health counselor
22 services (as defined in section 1861(III)(3)),” after
23 “qualified psychologist services,”.

24 (5) INCLUSION OF MARRIAGE AND FAMILY
25 THERAPISTS AND MENTAL HEALTH COUNSELORS AS

1 PRACTITIONERS FOR ASSIGNMENT OF CLAIMS.—Sec-
2 tion 1842(b)(18)(C) of the Social Security Act (42
3 U.S.C. 1395u(b)(18)(C)) is amended by adding at
4 the end the following new clauses:

5 “(vii) A marriage and family therapist (as de-
6 fined in section 1861(III)(2)).

7 “(viii) A mental health counselor (as defined in
8 section 1861(III)(4)).”.

9 (b) COVERAGE OF CERTAIN MENTAL HEALTH SERV-
10 ICES PROVIDED IN CERTAIN SETTINGS.—

11 (1) RURAL HEALTH CLINICS AND FEDERALLY
12 QUALIFIED HEALTH CENTERS.—Section
13 1861(aa)(1)(B) of the Social Security Act (42
14 U.S.C. 1395x(aa)(1)(B)) is amended by striking “or
15 by a clinical social worker (as defined in subsection
16 (hh)(1))” and inserting “, by a clinical social worker
17 (as defined in subsection (hh)(1)), by a marriage
18 and family therapist (as defined in subsection
19 (III)(2)), or by a mental health counselor (as defined
20 in subsection (III)(4))”.

21 (2) HOSPICE PROGRAMS.—Section
22 1861(dd)(2)(B)(i)(III) of the Social Security Act (42
23 U.S.C. 1395x(dd)(2)(B)(i)(III)) is amended by in-
24 serting “, marriage and family therapist, or mental
25 health counselor” after “social worker”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to services furnished
3 on or after January 1, 2024.

4 **SEC. 2. PROVIDER OUTREACH AND REPORTING ON CER-**
5 **TAIN BEHAVIORAL HEALTH INTEGRATION**
6 **SERVICES.**

7 (a) OUTREACH.—The Secretary of Health and
8 Human Services (in this section referred to as the “Sec-
9 retary”) shall conduct outreach to physicians and appro-
10 priate non-physician practitioners participating under the
11 Medicare program under title XVIII of the Social Security
12 Act (42 U.S.C. 1395 et seq.) with respect to behavioral
13 health integration services described by any of HCPCS
14 codes 99492 through 99494 or 99484 (or any successor
15 code). Such outreach shall include a comprehensive, one-
16 time education initiative to inform such physicians and
17 practitioners of the inclusion of such services as a covered
18 benefit under the Medicare program, including describing
19 the requirements to bill for such codes and the require-
20 ments for beneficiary eligibility for such services.

21 (b) REPORTS TO CONGRESS.—

22 (1) PROVIDER OUTREACH.—Not later than 1
23 year after the date of the completion of the edu-
24 cation initiative described in subsection (a), the Sec-
25 retary shall submit to the Committee on Ways and

1 Means and the Committee on Energy and Commerce
2 of the House of Representatives and the Committee
3 on Finance of the Senate a report on the outreach
4 conducted under such subsection. Such report shall
5 include a description of the methods used for such
6 outreach.

7 (2) UTILIZATION RATES.—Not later than 18
8 months after the date of the completion of the edu-
9 cation initiative described in subsection (a), and two
10 years thereafter, the Secretary shall submit to the
11 Committee on Ways and Means and the Committee
12 on Energy and Commerce of the House of Rep-
13 resentatives and the Committee on Finance of the
14 Senate a report on the number of Medicare bene-
15 ficiaries (including those accessing services in rural
16 and underserved areas) who, during the preceding
17 year, were furnished services described in subsection
18 (a) for which payment was made under title XVIII
19 of the Social Security Act (42 U.S.C. 1395 et seq.).

20 **SEC. 3. OUTREACH AND REPORTING ON OPIOID USE DIS-**
21 **ORDER TREATMENT SERVICES FURNISHED**
22 **BY OPIOID TREATMENT PROGRAMS.**

23 (a) OUTREACH.—

24 (1) PROVIDER OUTREACH.—The Secretary of
25 Health and Human Services (in this section referred

1 to as the “Secretary”) shall conduct outreach to
2 physicians and appropriate non-physician practi-
3 tioners participating under the Medicare program
4 under title XVIII of the Social Security Act (42
5 U.S.C. 1395 et seq.) with respect to opioid use dis-
6 order treatment services furnished by an opioid
7 treatment program (as defined in section 1861(jjj)
8 of the Social Security Act (42 U.S.C. 1395x(jjj))).
9 Such outreach shall include a comprehensive, one-
10 time education initiative to inform such physicians
11 and practitioners of the inclusion of such services as
12 a covered benefit under the Medicare program, in-
13 cluding describing the requirements for billing and
14 the requirements for beneficiary eligibility for such
15 services.

16 (2) BENEFICIARY OUTREACH.—The Secretary
17 shall conduct outreach to Medicare beneficiaries with
18 respect to opioid use disorder treatment services fur-
19 nished by an opioid treatment program (as defined
20 in section 1861(jjj) of the Social Security Act (42
21 U.S.C. 1395x(jjj))), including a comprehensive, one-
22 time education initiative informing such beneficiaries
23 about the eligibility requirements to receive such
24 services.

25 (b) REPORTS TO CONGRESS.—

1 (1) OUTREACH.—Not later than 1 year after
2 the date of the completion of the education initia-
3 tives described in subsection (a), the Secretary shall
4 submit to the Committee on Ways and Means and
5 the Committee on Energy and Commerce of the
6 House of Representatives and the Committee on Fi-
7 nance of the Senate a report on the outreach con-
8 ducted under such subsection. Such report shall in-
9 clude a description of the methods used for such
10 outreach.

11 (2) UTILIZATION RATES.—Not later than 18
12 months after the date of the completion of the edu-
13 cation initiatives described in subsection (a), and
14 two years thereafter, the Secretary shall submit to
15 the Committee on Ways and Means and the Com-
16 mittee on Energy and Commerce of the House of
17 Representatives and the Committee on Finance of
18 the Senate a report on the number of Medicare
19 beneficiaries who, during the preceding year, were
20 furnished opioid use disorder treatment services by
21 an opioid treatment program (as defined in section
22 1861(jjj) of the Social Security Act (42 U.S.C.
23 1395x(jjj))) for which payment was made under title
24 XVIII of such Act (42 U.S.C. 1395 et seq.).

1 **SEC. 4. EXCEPTION FOR PHYSICIAN WELLNESS PROGRAMS.**

2 (a) EXCEPTION FOR PHYSICIAN WELLNESS PRO-
3 GRAMS.—

4 (1) IN GENERAL.—Section 1877(e) of the So-
5 cial Security Act (42 U.S.C. 1395nn(e)) is amended
6 by adding at the end the following:

7 “(9) PHYSICIAN WELLNESS PROGRAMS.—A
8 bona fide mental health or behavioral health im-
9 provement or maintenance program offered to a phy-
10 sician by an entity, if—

11 “(A) such program—

12 “(i) consists of counseling, mental
13 health services, a suicide prevention pro-
14 gram, or a substance use disorder preven-
15 tion and treatment program;

16 “(ii) is made available to a physician
17 for the primary purpose of preventing sui-
18 cide, improving mental health and resil-
19 iency, or providing training in appropriate
20 strategies to promote the mental health
21 and resiliency of such physician;

22 “(iii) is set out in a written policy, ap-
23 proved in advance of the operation of the
24 program by the governing body of the enti-
25 ty providing such program, that includes—

1 “(I) a description of the content
2 and duration of the program;

3 “(II) a description of the evi-
4 dence-based support for the design of
5 the program;

6 “(III) the estimated cost of the
7 program;

8 “(IV) the personnel (including
9 the qualifications of such personnel)
10 implementing the program; and

11 “(V) the method by which such
12 entity will evaluate the use and suc-
13 cess of the program;

14 “(iv) is offered by an entity with a
15 formal medical staff to all physicians who
16 practice in the geographic area served by
17 such entity, including physicians who hold
18 bona fide appointments to the medical
19 staff of such entity or otherwise have clin-
20 ical privileges at such entity;

21 “(v) is offered to all such physicians
22 on the same terms and conditions and
23 without regard to the volume or value of
24 referrals or other business generated by a
25 physician for such entity;

1 “(vi) is evidence-based and conducted
2 by a qualified health professional; and

3 “(vii) meets such other requirements
4 the Secretary may impose by regulation as
5 needed to protect against program or pa-
6 tient abuse;

7 “(B) such entity is—

8 “(i) a hospital;

9 “(ii) an ambulatory surgical center;

10 “(iii) a community health center;

11 “(iv) a rural emergency hospital;

12 “(v) a rural health clinic;

13 “(vi) a skilled nursing facility; or

14 “(vii) a similar entity, as determined

15 by the Secretary; and

16 “(C) neither the provision of such pro-
17 gram, nor the value of such program, are con-
18 tingent upon the number or value of referrals
19 made by a physician to such entity.”.

20 (2) REGULATION.—Not later than 1 year after
21 the date of enactment of this Act, the Secretary of
22 Health and Human Services shall promulgate such
23 regulations as are necessary to carry out the amend-
24 ment made by paragraph (1).

1 (b) EXCEPTION UNDER THE ANTI-KICKBACK STAT-
2 UTE.—Section 1128B(b)(3) of the Social Security Act (42
3 U.S.C. 1320a–7b(b)(3)) is amended—

4 (1) in subparagraph (J), by striking “and” at
5 the end;

6 (2) in subparagraph (K), by striking the period
7 at the end and inserting “; and”; and

8 (3) by adding at the end the following:

9 “(L) a bona fide mental health or behavioral
10 health improvement or maintenance program, if—

11 “(i) such program—

12 “(I) consists of counseling, mental
13 health services, a suicide prevention pro-
14 gram, or a substance use disorder preven-
15 tion and treatment program;

16 “(II) is made available to a physician
17 and other clinicians for the primary pur-
18 pose of preventing suicide, improving men-
19 tal health and resiliency, or providing
20 training in appropriate strategies to pro-
21 mote the mental health and resiliency of
22 such physician;

23 “(III) is set out in a written policy,
24 approved in advance of the operation of
25 the program by the governing body of the

1 entity providing such program, that in-
2 cludes—

3 “(aa) a description of the content
4 and duration of the program;

5 “(bb) a description of the evi-
6 dence-based support for the design of
7 the program;

8 “(cc) the estimated cost of the
9 program;

10 “(dd) the personnel (including
11 the qualifications of such personnel)
12 implementing the program; and

13 “(ee) the method by which such
14 entity will evaluate the use and suc-
15 cess of the program;

16 “(IV) is offered by an entity with a
17 formal medical staff to all physicians and
18 other clinicians who practice in the geo-
19 graphic area served by such entity, includ-
20 ing physicians who hold bona fide appoint-
21 ments to the medical staff of such entity or
22 otherwise have clinical privileges at such
23 entity;

24 “(V) is offered to all such physicians
25 and clinicians on the same terms and con-

1 ditions and without regard to the volume
2 or value of referrals or other business gen-
3 erated by a physician or clinician for such
4 entity;

5 ““(VI) is evidence-based and conducted
6 by a qualified health professional; and

7 ““(VII) meets such other requirements
8 the Secretary may impose by regulation as
9 needed to protect against program or pa-
10 tient abuse;

11 “(ii) such entity is—

12 ““(I) a hospital;

13 ““(II) an ambulatory surgical center;

14 ““(III) a community health center;

15 ““(IV) a rural emergency hospital;

16 ““(V) a skilled nursing facility; or

17 ““(VI) any similar entity, as deter-
18 mined by the Secretary; and

19 “(iii) neither the provision of such pro-
20 gram, nor the value of such program, are con-
21 tingent upon the number or value of referrals
22 made by a physician or other clinician to such
23 entity.”.

1 **SEC. 5. REVIEW OF SAFE HARBOR UNDER THE ANTI-KICK-**
2 **BACK STATUTE FOR CERTAIN CONTINGENCY**
3 **MANAGEMENT INTERVENTIONS.**

4 (a) IN GENERAL.—Section 1128D(a) of the Social
5 Security Act (42 U.S.C. 1320a–7d(a)) is amended by add-
6 ing at the end the following new paragraph:

7 “(3) REVIEW OF SAFE HARBOR FOR CERTAIN
8 CONTINGENCY MANAGEMENT INTERVENTIONS.—

9 “(A) IN GENERAL.—Pursuant to the final
10 rule titled ‘Medicare and State Health Care
11 Programs: Fraud and Abuse; Revisions to Safe
12 Harbors Under the Anti-Kickback Statute, and
13 Civil Monetary Penalty Rules Regarding Bene-
14 ficiary Inducements’ and published in the Fed-
15 eral Register on December 2, 2020 (85 Fed.
16 Reg. 77684), not later than one year after the
17 date of the enactment of this paragraph, the In-
18 spector General of the Department of Health
19 and Human Services shall conduct a review on
20 whether to establish a safe harbor described in
21 paragraph (1)(A)(ii) for evidence-based contin-
22 gency management incentives and the param-
23 eters for such a safe harbor. In conducting the
24 review under the previous sentence, the Sec-
25 retary shall consider the extent to which pro-
26 viding such a safe harbor for evidence-based

1 contingency management incentives may result
2 in any of the factors described in paragraph
3 (2).

4 “(i) REPORT.—Not later than two years
5 after the date of the enactment of this para-
6 graph, the Secretary and the Inspector General
7 of the Department of Health and Human Serv-
8 ices shall submit to Congress recommendations,
9 including based on the review conducted under
10 subparagraph (A), for improving access to evi-
11 dence-based contingency management interven-
12 tions while ensuring quality of care, ensuring fi-
13 delity to evidence-based practices, and including
14 strong program integrity safeguards that pre-
15 vent increased waste, fraud, and abuse and pre-
16 vent medically unnecessary or inappropriate
17 items or services reimbursed in whole or in part
18 by a Federal health care program.”.

