

National Association for Behavioral Healthcare



Access. Care. Recovery.

SUBMITTED VIA: www.regulations.gov

Ms. Seema Verma
Administrator, Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

19 November 2018

Re: CMS-3346-P: Proposed Rule: Medicare and Medicaid Programs; Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction; RIN 0938-AT23.

Dear Ms. Verma:

The National Association for Behavioral Healthcare (NABH) represents behavioral healthcare provider organizations and professionals, and we appreciate the opportunity to provide comments on the Centers for Medicare and Medicaid Services' (CMS) "Medicare and Medicaid Programs; Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction" (CMS-3346-P) published in the Federal Register on September 17, 2018.

Founded in 1933, NABH represents and advocates for behavioral health provider systems that are committed to delivering responsive, accountable, and clinically effective prevention, treatment, and care for children, adolescents, adults, and older adults with mental and substance use disorders. Our members are behavioral healthcare provider organizations that own or manage more than 1,000 specialty psychiatric hospitals, general hospital psychiatric and addiction treatment units and behavioral health divisions, residential treatment facilities, youth services organizations, and extensive outpatient networks. These providers deliver all levels of care, including partial hospitalization services, outpatient services, residential treatment, and inpatient care.

We recognize the reason for developing the special conditions was to help the federal government determine the most appropriate use of Medicare funds by defining active, rather than custodial, treatment of psychiatric patients. While these conditions served an important purpose in helping define active treatment years ago, the current environment for hospital-level inpatient psychiatric treatment is very different.

To begin, the conditions of participation should update the description for both Advance Practice Registered Nurses (APRNs) and Nurse Practitioners (NPs) to reflect changes in scope of practice, education, and state law. We appreciate that CMS addressed this issue in its proposed rule.

Meanwhile, behavioral healthcare patients are admitted to hospitals because they need 24-hour, professionally supervised care to treat life-threatening conditions. These conditions are defined generally as those that present a danger to one's self or others, or psychiatric conditions so serious that a person is not safe. Detailed admission criteria and ongoing utilization review processes monitor patient acuity closely and determine in real time when patients no longer need hospital care. Hospital conditions of participation and hospital accreditation standards hold psychiatric hospitals to high levels of performance.

The overlay of highly prescriptive "special conditions" of participation—which have created a rigid guidance structure that does not exist for other conditions of participation—can result in "double jeopardy" for survey findings in psychiatric facilities. They often conflict with current community-based, state-of-the-art approaches to delivering the kinds of crisis stabilization interventions (within 5-to-10 day hospitalizations) that did not exist when special conditions

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were developed. That was during a time when patients were hospitalized in institutional settings for months or even years.

We have attached an addendum to this letter that includes notes and modifications to help CMS improve these regulations as the agency reevaluates special conditions of participation for psychiatric hospitals.

We look forward to continuing our work with you to help identify other opportunities for CMS to maintain flexibility and efficiency in its programs through regulatory, sub-regulatory, policy, practice, and procedural changes.

If you have questions, please contact me directly at 202-393-6700, ext. 100, or contact NABH Director of Policy and Regulatory Affairs Scott Dziengelski at 202-393-6700, ext. 115.

Thank you for the opportunity to provide our suggestions and concerns.

Sincerely,

A handwritten signature in black ink that reads "Mark Covall". The signature is fluid and cursive.

Mark Covall
President and CEO

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