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**VIA ELECTRONIC SUBMISSION:** [www.regulations.gov](http://www.regulations.gov)

June 2, 2008

Secretary Robert M. Gates  
Office of the Secretary of Defense  
c/o Federal Docket Management System Office  
1160 Defense Pentagon  
Washington, DC 20301-1160

**RE: TRICARE: Outpatient Hospital Prospective Payment System (OPPS)  
[DOD-2007-HA-0048; RIN 0720-AB19], 32 CFR Part 199**

Dear Secretary Gates,

As an association representing behavioral healthcare provider organizations and professionals, the National Association of Psychiatric Health Systems (NAPHS) appreciates the opportunity to provide comments on "TRICARE: Outpatient Hospital Prospective Payment System (OPPS)" as published in the April 1, 2008, *Federal Register* [DOD-2007-HA-0048; RIN 0720-AB19]. In this proposed rule, TRICARE is adopting Medicare's prospective payment system for reimbursement of hospital outpatient services currently in effect for the Medicare program as required under the *Balanced Budget Act of 1997*.

We are specifically providing comments on the impact of the TRICARE proposed rule on 1) partial hospitalization programs (PHP) and community mental health and 2) other outpatient mental health services.

#### **ABOUT NAPHS**

Founded in 1933, NAPHS advocates for behavioral health and represents provider systems that are committed to the delivery of 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, including more than 600 psychiatric hospitals, general hospital psychiatric and addiction treatment units, residential treatment centers, youth services organizations, outpatient networks, and other providers of care. Our members deliver all levels of care, including partial hospitalization services, outpatient services, residential treatment, and inpatient care. These services are paid for by all types of payers, including TRICARE, as well as commercial insurers, Medicare, Medicaid, states, and others.

## **“PARTIAL HOSPITALIZATION” COMMENTS**

The proposed rule states that the TRICARE and OPSS partial hospitalization reimbursement systems are “similar” with only “subtle differences” between the two payment methodologies. In fact, as we will describe below, the two systems are fundamentally different and, in many cases, incompatible with each other.

### **CONCERNS AND COMMENTS**

#### **Definition of a day of service**

TRICARE reimbursement is based on the intensity of the program as defined by the length of the treatment day. A *half day* is defined as one greater than three hours but less than six hours of service. A *full day* is six hours or more of service. Different levels of reimbursement are provided for each type of treatment day. TRICARE requires that a day include a psychotherapy service, and the requirements are not specific regarding the number or mix of other services furnished within the day.

MEDICARE reimbursement is based on a per diem payment with a required number of units of service. A day must include, at a minimum, three units of service that include a psychotherapy service and two others chosen from activities therapy and/or education and training. The number of units of service is expected to vary upwards from the minimum, depending on the identified needs of the patient. The units are reported as line items and packaged into APC 0033 for payment. There is no full- or half-day program differential—each day is paid the same under APC 0033.

**CONCERN:** The TRICARE half day is equivalent to the Medicare full day in terms of length and intensity of services. The proposed rule anticipates reimbursing the TRICARE half day at 75% of the Medicare per diem rate. Therefore, using the Medicare per diem for a TRICARE full day would substantially underpay for that level of intensity based on hours of service. In addition, a TRICARE half day, which equals a Medicare full day, would discount the reimbursement further by 25%. These payment levels would not be adequate to fairly compensate providers for the TRICARE-required partial hospitalization programs.

#### **Basis on which the reimbursement for a day of service is calculated**

Under TRICARE, a full-day program (more than six hours) is currently reimbursed at 40% of the average TRICARE inpatient per diem. A half-day program (more than three but less than six hours) is paid a per diem of 75% of the rate for full-day partial hospitalization.

MEDICARE reimbursement for a day of partial hospitalization is a bundled rate. The rate is set annually through the Outpatient Prospective Payment Rule based on cost data submitted to the Centers for Medicare and Medicaid Services (CMS).

**CONCERN:** The bases for calculating the reimbursement rates for TRICARE and Medicare are completely different. TRICARE is based on the average TRICARE inpatient per diem. The Medicare PHP rate is based on cost as reported to CMS via the cost report. Transitioning from one base rate to another could cause significant change in reimbursement and disruption of services. Moreover, Medicare calculates its median cost based on three or more units of services, while TRICARE requires six hours or more for a

full day. It is inappropriate to use a median cost based on three or more units of services to compare to a program that requires six hours or more services as does TRICARE.

### **Reimbursement for full- and half-days of treatment**

TRICARE provides reimbursement for both half- and full-day treatment. TRICARE states in the proposed rule that it desires to “ensure continued coverage of a well-established mental health treatment modality (half-day PHP) which has been in place under TRICARE for over a decade.” The proposed rule seeks to establish an additional APC to be used by TRICARE providers to account for half-day programs. The per diem of this new APC is set at 75% of the unadjusted full-day PHP APC amount (i.e., 75% of the APC 0033 amount).

MEDICARE does not have an equivalent half- and full day-treatment and operates using only one APC.

**CONCERN:** The introduction of a new APC for TRICARE would substantially underpay for a TRICARE half day. As mentioned above, the TRICARE half day is equivalent to the Medicare full day in terms of length and intensity of services. If TRICARE pays 75% of the Medicare rate for a half day, it would be paying 25% less than Medicare now pays for the same intensity of care in a TRICARE half day (greater than three, but less than six hours). If TRICARE, as stated in its proposed rule, believes that a half day is an effective program approach, then it would require a change in the proposed payment methodology to ensure adequate and fair payment for the level of care.

### **Setting of service**

TRICARE PHP services must be provided in a freestanding or hospital-based program. They cannot be provided in a community mental health center (CMHC).

MEDICARE PHP services may be provided in a freestanding, hospital-based, or CMHC setting. CMS stated in the CY08 Outpatient PPS Rule that, “We believe the most appropriate payment rate for PHPs is computed using both hospital-based and CMHC PHP data.” This data has historically been averaged and a rate established that is the same for all sites of service

**CONCERN:** The PHP rate is significantly driven by the cost of providing services in CMHCs because a majority of units of service are provided by CMHCs. CMHC costs have fluctuated widely through the last several years, contributing to the significant instability in the PHP per diem rate.

The Medicare PHP rate is established based on inclusion of CMHCs. TRICARE does not permit CMHCs to be certified providers. Therefore, the Medicare rate calculation is not a good proxy for TRICARE partial hospitalization programs because TRICARE does not include CMHCs as providers, but Medicare median costs rely very heavily on CMHCs cost structure.

### **Physician services**

Neither TRICARE nor Medicare includes physician services within the bundled payment for partial hospitalization. However, Medicare allows physicians (both employed and private

practitioners) to bill separately for their professional services delivered in a PHP program. TRICARE does not allow hospital-based employed physicians to bill separately for physician services. TRICARE only allows private practitioners (i.e., physicians) who are not employed by the hospital to bill for physician services.

**CONCERN:** If TRICARE moves to the Medicare PHP rates (which would be substantially less than current TRICARE PHP rates), hospital-based programs which employ their physicians would be further penalized.

This is another disconnect between Medicare and TRICARE payment policies and procedures. It is another example of why Medicare payment methodology is not appropriate for TRICARE PHP programs.

### **Certification requirements**

TRICARE PHP providers are required to be certified by the Department of Defense to provide PHP benefits. This certification requires compliance with a set of unique standards developed by TRICARE. Compliance with these standards imposes additional duties on certified providers.

MEDICARE does not require compliance with an additional set of standards in order for organizations to deliver PHP services. Facilities with Medicare provider numbers that are in compliance with all applicable licensing and accrediting requirements may deliver PHP services.

**CONCERN:** TRICARE requires compliance with a set of standards (including potential on-site surveys) intended to assure the Department of Defense that the quality of care of certified programs exceeds minimal standards. Medicare does not have a like set of standards. Additional resources are required to assure compliance with these standards both in the initial certification process and in the ongoing monitoring of compliance. These additional requirements should be taken into consideration in any rate-setting methodology.

### **RECOMMENDATIONS**

Based on our comments above regarding the problems of using the Medicare partial hospitalization payment methodology for TRICARE partial hospitalization programs, we recommend that the current TRICARE partial hospitalization payment structure remain in place.

We further recommend that TRICARE undertake a full analysis of the Medicare payment methodology and how it differs from the TRICARE partial hospitalization payment and regulatory structure. In addition, a full financial impact analysis needs to be done to determine the impact a move to Medicare reimbursement rates will have on the ability of certified providers to stay in the TRICARE program and provide adequate access to PHP services for beneficiaries.

## CONCLUSION

Thank you for your consideration of our comments. We look forward to continuing to work with the Department of Defense to ensure that TRICARE beneficiaries continue to have access to necessary mental health services.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Covall". The signature is written in a cursive style with a large initial "M" and a long, sweeping tail.

Mark Covall  
Executive Director