National Association for Behavioral Healthcare

Access. Care. Recovery.

8 September 2020

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

Re: Interim Final Rule on Condition of Participation Requirements for Hospitals to Report COVID–19 Data During the Public Health Emergency for COVID–19 [CMS-3401-IFC]

Dear Ms. Verma:

On behalf of the National Association for Behavioral Healthcare (NABH), thank you for the opportunity to comment on the interim final rule adding Covid-19 reporting requirements to the Conditions of Participation for hospitals administered by the Centers for Medicare and Medicaid Services.

NABH represents behavioral healthcare provider systems in almost every state that includes psychiatric hospitals and psychiatric units in general hospitals, as well as residential treatment facilities, partial hospitalization and intensive outpatient programs, medication assistant treatment centers including opioid treatment programs, and other facility-based outpatient services. Each of these facilities is focused on providing high-quality mental health and addiction treatment.

During the Covid-19 pandemic, our members have ensured their patients continue to have access to the services they need while these providers have navigated and adjusted to a new world filled with uncertainty, additional requirements, and complex challenges. They have developed new telehealth services and programs with significant new costs for technology and training. In addition, they have incurred added costs related to personal protective equipment (PPE) and screening as well as costs related to additional cleaning and infection control measures. These provider organizations follow both the federal Centers for Disease Control and Prevention and state guidelines regarding Covid-19 prevention and infection control to provide the safest care to their patients.

Our members are grateful for the Provider Relief Fund, but that funding does not cover a large share of the additional costs and lost revenue resulting from this pandemic. Moreover, unlike many of the other hospitals subject to the Covid-19 reporting requirements, psychiatric hospitals have not received any targeted funding allocation from the Provider Relief Fund to address their increased costs as well as the increased need for mental health care and addiction treatment during this pandemic.

The new reporting requirements for Covid-19 will significantly add to the regulatory burden psychiatric hospitals already must meet, which was already significant due to the Special Conditions of Participation that apply to these settings. Furthermore, unlike inpatient and other hospitals, psychiatric hospitals are unlikely to see any benefit from this additional reporting. They do not provide treatment for Covid-19 and are unlikely to be prioritized for distributions of PPE or testing supplies over the other hospitals in their communities where Covid-19 patients must go to access treatment for that condition.

Accordingly, we urge you to exempt psychiatric hospitals and psychiatric units of inpatient hospitals from these Covid-19 reporting requirements added to the Conditions of Participation for hospitals.

Short of that exemption, we urge you to modify the reporting requirements for psychiatric hospitals and psychiatric units to remove requirements that they report on topics that are not relevant to those settings—namely questions related to the following topics:

- Supplies and use of Remdesivir,

- Intensive care unit beds,
- Ventilators and ventilator supplies and medications, and
- Use of emergency department or overflow locations for Covid-19 patients while awaiting an inpatient bed.

Furthermore, we ask that you modify the interim final rule to lessen the frequency of reporting. The rule does not explain why this very burdensome reporting must be done every day, seven days a week. It is especially unclear why this daily reporting is necessary for facilities that are not focused on treating Covid-19. The staffing information is particularly arduous to submit on a daily basis.

In addition, it is difficult for psychiatric facilities to report the number of patients with Covid-19 accurately in such a short time frame. Psychiatric patients often transfer between psychiatric facilities and inpatient hospitals, particularly if there is a concern that the patient may have Covid-19. This movement between settings makes it difficult for psychiatric hospitals and units to get an accurate daily count of positive cases. At the very least, the rule should be modified to allow psychiatric hospitals and units to report the metrics relevant to them on a weekly basis instead of daily. The immediate effective date of these reporting requirements has been particularly alarming for psychiatric facilities. These settings were excluded from the priority hospital lists the administration distributed in state reports on "Key Hospital Variable" reporting. Furthermore, up until now this reporting activity was described as a condition for receiving Remdesivir distributions that would not be targeted to psychiatric facilities. As a result, the lack of time to prepare has been especially burdensome on these settings and has shifted valuable resources away from the primary goal of ensuring access to critical mental health care and addiction treatment. Psychiatric hospitals and settings should be given at least several months to implement the reporting requirements that are relevant to the care they provide.

Furthermore, the guidance on data elements incorporated into this interim final rule indicates that some hospitals may report to their state agencies that will report to the federal government for them. However, it is unclear how hospitals are to know whether their state has been certified to carry out that reporting. In addition, the status of each state's certification may change, and states may be permitted to report for some of their hospitals, but not all. It is not clear how hospitals will know whether they should report this information to their state agencies or to the federal government, especially because a state's certification may change over time.

Finally, states often have reporting requirements that are not consistent with the Covid-19 reporting requirements added to the Conditions of Participation in this interim final rule. For facilities that do not focus on Covid-19 and are not likely to be prioritized for Remdesivir or PPE distributions, having an additional and inconsistent set of measures to report that varies by state is incredibly inefficient. All of these uncertain and inconsistent administrative processes are very likely to draw resources away from improving access to behavioral healthcare at the very moment we need to implement processes and policies that will increase access to mental health and addiction treatment services.

If you have questions, please contact me directly at shawn@nabh.org or 202-393-6700, ext. 100, or contact NABH Director of Policy and Regulatory Affairs Kirsten Beronio at kirsten@nabh.org or 202-393-6700, ext. 115. Thank you for your consideration.

Sincerely,

Shawn Coughlin
President and CEO

About NABH

The National Association for Behavioral Healthcare (NABH) represents provider systems that treat children, adolescents, adults, and older adults with mental health and substance use disorders in inpatient behavioral healthcare hospitals and units, residential treatment facilities, partial hospitalization and intensive outpatient programs, medication assisted treatment centers, specialty outpatient behavioral healthcare programs, and recovery support services in nearly all 50 states. The association was founded in 1933.