



September 11, 2023

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
**Attention: CMS-1786-P**  
P.O. Box 8016  
Baltimore, MD 21244-8016

**RE: 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 (CMS-1786-P)**

To Whom It May Concern:

The National Association of Community Health Centers (NACHC) is the national membership organization for federally qualified health centers (also known as FQHCs or health centers). Health centers are federally-funded or federally recognized nonprofit, community-directed provider clinics that serve as the health home for over 31 million people, including 1 in 6 Medicaid and over 3 million elderly patients. It is the collective mission and mandate of over 1,400 health centers around the country to provide access to high-quality, cost-effective primary and preventative medical care as well as dental, behavioral health, and pharmacy services and other “enabling” or support services that facilitate access to care to individuals and families located in medically underserved areas, regardless of insurance status or ability to pay.

For years, health centers have served patients with behavioral health needs by providing services to support substance use disorders (SUD), such as medication-assisted treatment. In 2022, health centers provided care to over 2.7 million patients with behavioral health care needs and 300,000 patients with SUD.<sup>1</sup> Health centers’ 18,800 behavioral health staff are well-positioned to provide enhanced behavioral services under the Intensive Outpatient Program (IOP). The number of health center Medicare patients has risen significantly over the past ten years, from 1.5 million in 2010 to 3.2 million in 2021, representing 11% of patients served. Allowing FQHCs to furnish these intensive behavioral health services will expand access to affordable and culturally competent services for the most vulnerable Medicare beneficiaries.

NACHC appreciates CMS’ proposal to include FQHCs as a provider under Medicare’s IOP. It is encouraging that the Biden Administration understands health centers’ unique role in integrating behavioral health and primary care in the most underserved communities. NACHC looks forward to working collaboratively with CMS to ensure IOP is successfully implemented to benefit health center patients. Most importantly, we urge CMS to take our recommendations to protect health centers’

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<sup>1</sup> 2022 UDS Data (HRSA)

reimbursement and financial viability to provide such innovative services. Our recommendations below highlight areas CMS should address before Calendar Year 2024.

### ***I. Special Payment Rules for Intensive Outpatient Services (VIII.B.4)***

Health centers are well-positioned to reach the most underserved Medicare beneficiaries who otherwise may not have access to behavioral health services in their community. NACHC appreciates CMS permitting FQHCs to provide IOP services to eligible patients. It is critical that health centers are reimbursed adequately for their expertise and unique community-based services, including IOP services. In alignment with existing Medicare Part B, **NACHC requests CMS clarify that FQHC's payment would be the lesser of (1) FQHC's actual charges or (2) the payment amount for a hospital outpatient department providing IOP services.** Below are recommendations for CMS to consider as you work to develop additional regulations and guidance to implement IOP.

For the FQHC prospective payment system (PPS) rate, IOP services will be carved out of the allowable costs and paid for as if furnished by a hospital outpatient department. **NACHC urges CMS to provide additional guidance to health centers on classifying professional services furnished by physicians, nurse practitioners, physician assistants, and psychologists during an IOP service.** Specifically, CMS should clarify if FQHCs should bill for those professionals' services via the FQHC PPS or use their Part B enrollment. NACHC's interpretation is that health centers should be permitted to allocate the allowable costs like salary, contracting, and/or benefits costs associated with these professionals' time under the "FQHC services" cost report if it cannot be included under their IOP cost report. Additionally, the "commingling" principle in the Medicare Benefit Policy Manual<sup>2</sup> should not preclude FQHCs from furnishing FQHC services and IOP services on the same premise to ensure health centers can meet their patients' needs without regulatory barriers.

### ***II. FQHC Supplemental Payments (VIII.B.4.c)***

NACHC agrees with CMS that the Medicare statute, as amended by the Consolidated Appropriations Act (CAA) 2023, requires supplemental "wraparound" payments to be paid for IOP services. However, the proposed rule fails to acknowledge that health centers are reimbursed outside of the FQHC PPS rate for IOP, which requires a different supplemental payment rate methodology. **NACHC strongly urges CMS to adopt a broader interpretation of the special payment rule to ensure health centers are paid up to the original Medicare amount that would be paid for IOP services, which is not FQHC PPS.** Under the proposed rule, health centers shall be paid the lesser of an FQHC's actual charges or the payment amount for a hospital outpatient department providing IOP services. NACHC requests CMS clarify in the final rule that supplemental payments for Medicare Advantage (MA) beneficiaries cover the difference between the contract rate and the IOP service rate.

Given existing challenges with sufficient supplemental payments and the growing number of MA beneficiaries, **NACHC requests CMS provide clear guidance to Medicare Administrative Contractors (MACs) on issuing qualifying supplemental payments to health centers for IOP services.** We encourage CMS to review its supplemental payment guidance in the regulations and in the Medicare Benefit Policy Manual and Claims Processing Manual.

### ***III. Multiple Visits (VIII.B.5)***

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<sup>2</sup> Ch. 13, Section 100

**NACHC strongly urges CMS to allow for a FQHC “mental health visit” to occur on the same day as IOP services.** Under the proposed rule, health centers risk providing a range of services to a patient without adequate reimbursement due to same-day billing restrictions. This can arise when, as noted previously, certain professionals’ services are excluded from the OPSS payment methodology for Partial Hospitalization Program (PHP) and IOP services, even though those professionals take part in the provision of IOP services. We assume that when these professionals furnish qualifying IOP services, the FQHC would bill for those services under the FQHC PPS, just as another provider of IOP (community mental health center or outpatient department) would furnish those services under the relevant methodology, the Physician Fee Schedule.

Additionally, NACHC believes there could be instances where same-day IOP and mental health visits could occur. For example, when an IOP patient receives individual therapy sessions with physicians or psychologists as part of an IOP day,<sup>3</sup> it appears that such a service would be billed separately under the relevant methodology (FQHC PPS). As patient centered medical homes, health centers should not be precluded from providing two different services to a patient on a single day. **Specifically, health centers should be able to bill an FQHC PPS mental health service and IOP service if delivered on the same day.**

#### **IV. Responses to Request for Comment and Other Comments**

**NACHC requests that CMS provide more details on how it plans to require FQHCs to bill for IOP services.** Other than CMS specifying their expectation for FQHCs to use the same condition code used by community mental health centers (CMHCs) and outpatient departments (OPDs) to designate IOP, CMS has not clearly indicated how it wants FQHCs to bill for IOP services. For FQHCs to prepare for the rollout of this service, we ask CMS to clarify and confirm the following:

- FQHCs may bill for IOP services under their FQHC enrollment (no separate enrollment is required).
- FQHCs may bill for IOP on an FQHC claim.
- Can FQHCs use the same claim when documenting IOP services that are furnished on the same day as another FQHC service?
- Will individual HCPCS associated with each IOP service received on a day be required to be listed on claims?
- Can CMS confirm our understanding that for FQHCs, as well as other providers of IOP, APC 5861 is the classification used for IOP days with *three services or fewer*?

**NACHC supports CMS permitting health centers to be eligible to bill under the OPSS for Ambulatory Payment Classifications (APCs) associated with four or more IOP services per day.** A health center patient may need more than three services provided per day under IOP, depending on their behavioral health needs. Health center patients tend to have more complex care needs compared to other patients and would greatly benefit from this allowance. Furthermore, allowing health centers to bill under the OPSS for these costlier primary care services aligns with how other IOP providers receive payments for furnishing these services.

**NACHC does not believe the application of a geographical adjuster is statutorily required or required by regulation since payment for IOP is not under the FQHC PPS.** We urge CMS to adopt

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<sup>3</sup> 42 CFR 410.44(a)(4)(i)

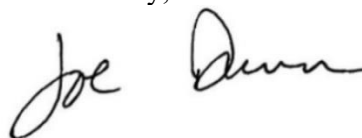
policies that ensure payments for IOP services should be equal, no matter the location of the health center. Therefore, we do not believe a geographical adjuster is necessary for the purposes of payment for IOP services.

**NACHC recommends CMS amend the IOP services codes to better accommodate situations for discharge planning from an IOP to a Partial Hospitalization Program (PHP).** The proposed conditions for IOP would require a physician to certify that the patient needs a minimum of 9 hours per week of services. However, for FQHC IOP services, there is no requirement to certify that the patient needs fewer than 20 hours per week of services. If the patient needed that many hours of care, a PHP would be the appropriate service rather than an IOP. Because FQHCs cannot provide a PHP, the IOP service codes should encompass activities relating to facilitating a transition to PHP for patients who participate in IOP but for whom the FQHC has determined the need for more intensive PHP services.<sup>4</sup> Amending the IOP service codes will help better demonstrate the services FQHCs are providing their patients in IOP and better document their transition of care.

**NACHC recommends CMS ensure that IOP certification appointments count as FQHC visits by amending the Medicare FQHC-specific payment codes.** FQHCs may furnish IOP only upon a physician's certification that the patient needs IOP. Furthermore, physician recertifications are required at least once per 60 days for a patient to continue IOP. CMS should amend the Medicare FQHC specific payment codes<sup>5</sup> to allow for a physician visit with the purpose of evaluating a patient for IOP (or recertifying the patient) to qualify as a billable mental health "visit."

Thank you for your consideration of these comments on the Intensive Outpatient Program proposal that will allow FQHCs to furnish enhanced behavioral health services to our Medicare patients. We are supportive of the proposal and look forward to working with CMS to clarify certain provisions to allow FQHCs to effectively offer these services. If you have any questions, please contact Vacheria Keys, Director of Policy and Regulatory Affairs, at [vkeys@nachc.org](mailto:vkeys@nachc.org).

Sincerely,



Joe Dunn  
Senior Vice President, Public Policy and Advocacy

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<sup>4</sup> which can be accessed only in a CMHC or OPD

<sup>5</sup> <https://www.cms.gov/medicare/medicare-fee-for-service-payment/fqhcpps/downloads/fqhc-pps-specific-payment-codes.pdf>