

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO COMMITTEE PRINT 117-2
OFFERED BY M . _____**

In lieu of the matter proposed by the Committee
Print, insert the following:

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));”.

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

4 “(III) MARRIAGE AND FAMILY THERAPIST SERVICES;
5 MARRIAGE AND FAMILY THERAPIST; MENTAL HEALTH
6 COUNSELOR SERVICES; MENTAL HEALTH COUNSELOR.—

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

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

24 “(A) possesses a master’s or doctor’s de-
25 gree which qualifies for licensure or certification

1 as a marriage and family therapist pursuant to
2 State law of the State in which such individual
3 furnishes the services described in paragraph
4 (1);

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

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

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

16 “(E) meets such other requirements as
17 specified by the Secretary.

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

1 is legally authorized to perform under State law (or
2 the State regulatory mechanism provided by the
3 State law) of the State in which such services are
4 furnished, as would otherwise be covered if furnished
5 by a physician or as incident to a physician's profes-
6 sional service.

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

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

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

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

24 “(D) meets such other requirements as
25 specified by the Secretary.”.

1 (3) AMOUNT OF PAYMENT.—Section 1833(a)(1)
2 of the Social Security Act (42 U.S.C. 1395l(a)(1)),
3 as amended by section 11101(b) of Public Law
4 117169, is further amended—

5 (A) by striking “and (EE)” and inserting
6 “(EE)”; and

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

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

1 (5) INCLUSION OF MARRIAGE AND FAMILY
2 THERAPISTS AND MENTAL HEALTH COUNSELORS AS
3 PRACTITIONERS FOR ASSIGNMENT OF CLAIMS.—Sec-
4 tion 1842(b)(18)(C) of the Social Security Act (42
5 U.S.C. 1395u(b)(18)(C)) is amended by adding at
6 the end the following new clauses:

7 “(vii) A marriage and family therapist (as de-
8 fined in section 1861(lll)(2)).

9 “(viii) A mental health counselor (as defined in
10 section 1861(lll)(4)).”.

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

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

23 (2) HOSPICE PROGRAMS.—Section
24 1861(dd)(2)(B)(i)(III) of the Social Security Act (42
25 U.S.C. 1395x(dd)(2)(B)(i)(III)) is amended by in-

1 serting “, marriage and family therapist, or mental
2 health counselor” after “social worker”.

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

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

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

23 (b) REPORTS TO CONGRESS.—

24 (1) PROVIDER OUTREACH.—Not later than 1
25 year after the date of the completion of the edu-

1 cation initiative described in subsection (a), the Sec-
2 retary shall submit to the Committee on Ways and
3 Means and the Committee on Energy and Commerce
4 of the House of Representatives and the Committee
5 on Finance of the Senate a report on the outreach
6 conducted under such subsection. Such report shall
7 include a description of the methods used for such
8 outreach.

9 (2) UTILIZATION RATES.—Not later than 18
10 months after the date of the completion of the edu-
11 cation initiative described in subsection (a), and two
12 years thereafter, the Secretary shall submit to the
13 Committee on Ways and Means and the Committee
14 on Energy and Commerce of the House of Rep-
15 resentatives and the Committee on Finance of the
16 Senate a report on the number of Medicare bene-
17 ficiaries (including those beneficiaries accessing serv-
18 ices in rural and underserved areas) who, during the
19 preceding year, were furnished services described in
20 subsection (a) for which payment was made under
21 title XVIII of the Social Security Act (42 U.S.C.
22 1395 et seq.).

1 **SEC. 3. OUTREACH AND REPORTING ON OPIOID USE DIS-**
2 **ORDER TREATMENT SERVICES FURNISHED**
3 **BY OPIOID TREATMENT PROGRAMS.**

4 (a) OUTREACH.—

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

22 (2) BENEFICIARY OUTREACH.—The Secretary
23 shall conduct outreach to Medicare beneficiaries with
24 respect to opioid use disorder treatment services fur-
25 nished by an opioid treatment program (as defined
26 in section 1861(jjj) of the Social Security Act (42

1 U.S.C. 1395x(jjj))), including a comprehensive, one-
2 time education initiative informing such beneficiaries
3 about the eligibility requirements to receive such
4 services.

5 (b) REPORTS TO CONGRESS.—

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

16 (2) UTILIZATION RATES.—Not later than 18
17 months after the date of the completion of the edu-
18 cation initiatives described in subsection (a), and
19 two years thereafter, the Secretary shall submit to
20 the Committee on Ways and Means and the Com-
21 mittee on Energy and Commerce of the House of
22 Representatives and the Committee on Finance of
23 the Senate a report on the number of Medicare
24 beneficiaries who, during the preceding year, were
25 furnished opioid use disorder treatment services by

1 an opioid treatment program (as defined in section
2 1861(jjj) of the Social Security Act (42 U.S.C.
3 1395x(jjj))) for which payment was made under title
4 XVIII of such Act (42 U.S.C. 1395 et seq.).

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

6 (a) EXCEPTION FOR PHYSICIAN WELLNESS PRO-
7 GRAMS.—

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

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

15 “(A) such program—

16 “(i) consists of counseling, mental
17 health services, a suicide prevention pro-
18 gram, or a substance use disorder preven-
19 tion and treatment program;

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

1 “(iii) is set out in a written policy, ap-
2 proved in advance of the operation of the
3 program by the governing body of the enti-
4 ty providing such program, that includes—
5 “ (I) a description of the content
6 and duration of the program;
7 “ (II) a description of the evi-
8 dence-based support for the design of
9 the program;
10 “ (III) the estimated cost of the
11 program;
12 “ (IV) the personnel (including
13 the qualifications of such personnel)
14 implementing the program; and
15 “ (V) the method by which such
16 entity will evaluate the use and suc-
17 cess of the program;
18 “(iv) is offered by an entity with a
19 formal medical staff to all physicians who
20 practice in the geographic area served by
21 such entity, including physicians who hold
22 bona fide appointments to the medical
23 staff of such entity or otherwise have clin-
24 ical privileges at such entity;

1 “(v) is offered to all such physicians
2 on the same terms and conditions and
3 without regard to the volume or value of
4 referrals or other business generated by a
5 physician for such entity;

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

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

12 “(B) such entity is—

13 “(i) a hospital;

14 “(ii) an ambulatory surgical center;

15 “(iii) a community health center;

16 “(iv) a rural emergency hospital;

17 “(v) a rural health clinic;

18 “(vi) a skilled nursing facility; or

19 “(vii) a similar entity, as determined
20 by the Secretary; and

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

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

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

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

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

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

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

16 “(i) such program—

17 “(I) consists of counseling, mental
18 health services, a suicide prevention pro-
19 gram, or a substance use disorder preven-
20 tion and treatment program;

21 “(II) is made available to a physician
22 and other clinicians for the primary pur-
23 pose of preventing suicide, improving men-
24 tal health and resiliency, or providing
25 training in appropriate strategies to pro-

1 mote the mental health and resiliency of
2 such physician;

3 “(III) is set out in a written policy,
4 approved in advance of the operation of
5 the program by the governing body of the
6 entity providing such program, that in-
7 cludes—

8 “(aa) a description of the content
9 and duration of the program;

10 “(bb) a description of the evi-
11 dence-based support for the design of
12 the program;

13 “(cc) the estimated cost of the
14 program;

15 “(dd) the personnel (including
16 the qualifications of such personnel)
17 implementing the program; and

18 “(ee) the method by which such
19 entity will evaluate the use and suc-
20 cess of the program;

21 “(IV) is offered by an entity with a
22 formal medical staff to all physicians and
23 other clinicians who practice in the geo-
24 graphic area served by such entity, includ-
25 ing physicians who hold bona fide appoint-

1 ments to the medical staff of such entity or
2 otherwise have clinical privileges at such
3 entity;

4 “(V) is offered to all such physicians
5 and clinicians on the same terms and con-
6 ditions and without regard to the volume
7 or value of referrals or other business gen-
8 erated by a physician or clinician for such
9 entity;

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

12 “(VII) meets such other requirements
13 the Secretary may impose by regulation as
14 needed to protect against program or pa-
15 tient abuse;

16 “(ii) such entity is—

17 “(I) a hospital;

18 “(II) an ambulatory surgical center;

19 “(III) a community health center;

20 “(IV) a rural emergency hospital;

21 “(V) a skilled nursing facility; or

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

24 “(iii) neither the provision of such pro-
25 gram, nor the value of such program, are con-

1 tingent upon the number or value of referrals
2 made by a physician or other clinician to such
3 entity.”.

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

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

10 “(3) REVIEW OF SAFE HARBOR FOR CERTAIN
11 CONTINGENCY MANAGEMENT INTERVENTIONS.—

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

1 eters for such a safe harbor. In conducting the
2 review under the previous sentence, the Sec-
3 retary shall consider the extent to which pro-
4 viding such a safe harbor for evidence-based
5 contingency management incentives may result
6 in any of the factors described in paragraph
7 (2).

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

