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:

SECTION 1. COVERAGE OF MARRIAGE AND FAMILY THERAPIST SERVICES AND MENTAL HEALTH COUNSELOR SERVICES UNDER PART B OF THE MEDICARE PROGRAM.

(a) COVERAGE OF SERVICES.—

(1) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(A) in subparagraph (GG), by striking “and” after the semicolon at the end;

(B) in subparagraph (HH), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new subparagraph:

“(II) marriage and family therapist services (as defined in subsection (lll)(1)) and mental health counselor services (as defined in subsection (lll)(3));”.

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

“(iii) MARRIAGE AND FAMILY THERAPIST SERVICES; MARRIAGE AND FAMILY THERAPIST; MENTAL HEALTH COUNSELOR SERVICES; MENTAL HEALTH COUNSELOR.—

“(1) MARRIAGE AND FAMILY THERAPIST SERVICES.—The term ‘marriage and family therapist services’ means services furnished by a marriage and family therapist (as defined in paragraph (2)) for the diagnosis and treatment of mental illnesses (other than services furnished to an inpatient of a hospital and other than services furnished to an inpatient of a skilled nursing facility) which the marriage and family therapist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which such services are furnished, as would otherwise be covered if furnished by a physician or as an incident to a physician’s professional service.

“(2) MARRIAGE AND FAMILY THERAPIST.—The term ‘marriage and family therapist’ means an individual who—

“(A) possesses a master’s or doctor’s degree which qualifies for licensure or certification
as a marriage and family therapist pursuant to State law of the State in which such individual furnishes the services described in paragraph (1);

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

“(C) after obtaining such degree has performed at least 2 years of clinical supervised experience in marriage and family therapy;

“(D) in the case of an individual performing services in a State that provides for licensure or certification of marriage and family therapists, is licensed or certified as a marriage and family therapist in such State; and

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

“(3) Mental health counselor services.—The term ‘mental health counselor services’ means services furnished by a mental health counselor (as defined in paragraph (4)) for the diagnosis and treatment of mental illnesses (other than services furnished to an inpatient of a hospital and other than services furnished to an inpatient of a skilled nursing facility) which the mental health counselor
is legally authorized to perform under State law (or
the State regulatory mechanism provided by the
State law) of the State in which such services are
furnished, as would otherwise be covered if furnished
by a physician or as incident to a physician’s profes-
sional service.

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

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

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

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

“(D) meets such other requirements as
specified by the Secretary.”.
3) AMOUNT OF PAYMENT.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)), as amended by section 11101(b) of Public Law 117169, is further amended—

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

(B) by inserting before the semicolon at the end the following: “and (FF) with respect to marriage and family therapist services and mental health counselor services under section 1861(s)(2)(II), the amounts paid shall be 80 percent of the lesser of the actual charge for the services or 75 percent of the amount determined for payment of a psychologist under subparagraph (L)”.

4) EXCLUSION OF MARRIAGE AND FAMILY THERAPIST SERVICES AND MENTAL HEALTH COUNSELOR SERVICES FROM SKILLED NURSING FACILITY PROSPECTIVE PAYMENT SYSTEM.—Section 1888(e)(2)(A)(ii) of the Social Security Act (42 U.S.C. 1395yy(e)(2)(A)(ii)) is amended by inserting “marriage and family therapist services (as defined in section 1861(lll)(1)), mental health counselor services (as defined in section 1861(lll)(3)),” after “qualified psychologist services,”.
(5) INCLUSION OF MARRIAGE AND FAMILY THERAPISTS AND MENTAL HEALTH COUNSELORS AS PRACTITIONERS FOR ASSIGNMENT OF CLAIMS.—Section 1842(b)(18)(C) of the Social Security Act (42 U.S.C. 1395u(b)(18)(C)) is amended by adding at the end the following new clauses:

“(vii) A marriage and family therapist (as defined in section 1861(lll)(2)).

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

(b) COVERAGE OF CERTAIN MENTAL HEALTH SERVICES PROVIDED IN CERTAIN SETTINGS.—

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

(2) HOSPICE PROGRAMS.—Section 1861(dd)(2)(B)(i)(III) of the Social Security Act (42 U.S.C. 1395x(dd)(2)(B)(i)(III)) is amended by in-
serting “, marriage and family therapist, or mental health counselor” after “social worker”.

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

SEC. 2. PROVIDER OUTREACH AND REPORTING ON CERTAIN BEHAVIORAL HEALTH INTEGRATION SERVICES.

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

(b) REPORTS TO CONGRESS.—

(1) PROVIDER OUTREACH.—Not later than 1 year after the date of the completion of the edu-
cation initiative described in subsection (a), the Sec-
retary shall submit to the Committee on Ways and
Means and the Committee on Energy and Commerce
of the House of Representatives and the Committee
on Finance of the Senate a report on the outreach
conducted under such subsection. Such report shall
include a description of the methods used for such
outreach.

(2) Utilization rates.—Not later than 18
months after the date of the completion of the edu-
cation initiative described in subsection (a), and two
years thereafter, the Secretary shall submit to the
Committee on Ways and Means and the Committee
on Energy and Commerce of the House of Rep-
resentatives and the Committee on Finance of the
Senate a report on the number of Medicare bene-
eficiaries (including those beneficiaries accessing serv-
ices in rural and underserved areas) who, during the
preceding year, were furnished services described in
subsection (a) for which payment was made under
title XVIII of the Social Security Act (42 U.S.C.
1395 et seq.).
SEC. 3. OUTREACH AND REPORTING ON OPIOID USE DISORDER TREATMENT SERVICES FURNISHED BY OPIOID TREATMENT PROGRAMS.

(a) OUTREACH.—

(1) PROVIDER OUTREACH.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall conduct outreach to physicians and appropriate non-physician practitioners participating under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) with respect to opioid use disorder treatment services furnished by an opioid treatment program (as defined in section 1861(jjj) of the Social Security Act (42 U.S.C. 1395x(jjj))). Such outreach shall include a comprehensive, one-time education initiative to inform such physicians and practitioners of the inclusion of such services as a covered benefit under the Medicare program, including describing the requirements for billing and the requirements for beneficiary eligibility for such services.

(2) BENEFICIARY OUTREACH.—The Secretary shall conduct outreach to Medicare beneficiaries with respect to opioid use disorder treatment services furnished by an opioid treatment program (as defined in section 1861(jjj) of the Social Security Act (42 U.S.C. 1395x(jjj))).
U.S.C. 1395x(jjj)), including a comprehensive, one-
time education initiative informing such beneficiaries
about the eligibility requirements to receive such
services.

(b) REPORTS TO CONGRESS.—

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

(2) UTILIZATION RATES.—Not later than 18
months after the date of the completion of the edu-
cation initiatives described in subsection (a), and
two years thereafter, the Secretary shall submit to
the Committee on Ways and Means and the Com-
mittee on Energy and Commerce of the House of
Representatives and the Committee on Finance of
the Senate a report on the number of Medicare
beneficiaries who, during the preceding year, were
furnished opioid use disorder treatment services by
an opioid treatment program (as defined in section 1861(jjj) of the Social Security Act (42 U.S.C. 1395x(jjj))) for which payment was made under title XVIII of such Act (42 U.S.C. 1395 et seq.).

SEC. 4. EXCEPTION FOR PHYSICIAN WELLNESS PROGRAMS.

(a) Exception for Physician Wellness Programs.—

(1) In general.—Section 1877(e) of the Social Security Act (42 U.S.C. 1395nn(e)) is amended by adding at the end the following:

“(9) Physician wellness programs.—A bona fide mental health or behavioral health improvement or maintenance program offered to a physician by an entity, if—

“(A) such program—

“(i) consists of counseling, mental health services, a suicide prevention program, or a substance use disorder prevention and treatment program;

“(ii) is made available to a physician for the primary purpose of preventing suicide, improving mental health and resiliency, or providing training in appropriate strategies to promote the mental health and resiliency of such physician;
“(iii) is set out in a written policy, approved in advance of the operation of the program by the governing body of the entity providing such program, that includes—

“(I) a description of the content and duration of the program;

“(II) a description of the evidence-based support for the design of the program;

“(III) the estimated cost of the program;

“(IV) the personnel (including the qualifications of such personnel) implementing the program; and

“(V) the method by which such entity will evaluate the use and success of the program;

“(iv) is offered by an entity with a formal medical staff to all physicians who practice in the geographic area served by such entity, including physicians who hold bona fide appointments to the medical staff of such entity or otherwise have clinical privileges at such entity;
“(v) is offered to all such physicians on the same terms and conditions and without regard to the volume or value of referrals or other business generated by a physician for such entity;

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

“(vii) meets such other requirements the Secretary may impose by regulation as needed to protect against program or patient abuse;

“(B) such entity is—

“(i) a hospital;

“(ii) an ambulatory surgical center;

“(iii) a community health center;

“(iv) a rural emergency hospital;

“(v) a rural health clinic;

“(vi) a skilled nursing facility; or

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

“(C) neither the provision of such program, nor the value of such program, are contingent upon the number or value of referrals made by a physician to such entity.”.
(2) REGULATION.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall promulgate such regulations as are necessary to carry out the amendment made by paragraph (1).

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

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

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

(3) by adding at the end the following:

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

“(i) such program—

“(I) consists of counseling, mental health services, a suicide prevention program, or a substance use disorder prevention and treatment program;

“(II) is made available to a physician and other clinicians for the primary purpose of preventing suicide, improving mental health and resiliency, or providing training in appropriate strategies to pro-
mote the mental health and resiliency of such physician;

“(III) is set out in a written policy, approved in advance of the operation of the program by the governing body of the entity providing such program, that includes—

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

“(bb) a description of the evidence-based support for the design of the program;

“(cc) the estimated cost of the program;

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

“(ee) the method by which such entity will evaluate the use and success of the program;

“(IV) is offered by an entity with a formal medical staff to all physicians and other clinicians who practice in the geographic area served by such entity, including physicians who hold bona fide appoint-
ments to the medical staff of such entity or otherwise have clinical privileges at such entity;

“(V) is offered to all such physicians and clinicians on the same terms and conditions and without regard to the volume or value of referrals or other business generated by a physician or clinician for such entity;

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

“(VII) meets such other requirements the Secretary may impose by regulation as needed to protect against program or patient abuse;

“(ii) such entity is—

“(I) a hospital;

“(II) an ambulatory surgical center;

“(III) a community health center;

“(IV) a rural emergency hospital;

“(V) a skilled nursing facility; or

“(VI) any similar entity, as determined by the Secretary; and

“(iii) neither the provision of such program, nor the value of such program, are con-
tangent upon the number or value of referrals
made by a physician or other clinician to such
entity.”.

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

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

“(3) Review of Safe Harbor for Certain Contingency Management Interventions.—

“(A) In General.—Pursuant to the final
rule titled ‘Medicare and State Health Care
 Programs: Fraud and Abuse; Revisions to Safe
Harbors Under the Anti-Kickback Statute, and
Civil Monetary Penalty Rules Regarding Bene-
ficiary Inducements’ and published in the Fed-
eral Register on December 2, 2020 (85 Fed.
Reg. 77684), not later than one year after the
date of the enactment of this paragraph, the In-
spector General of the Department of Health
and Human Services shall conduct a review on
whether to establish a safe harbor described in
paragraph (1)(A)(ii) for evidence-based contin-
gency management incentives and the param-
eters for such a safe harbor. In conducting the
review under the previous sentence, the Sec-
retary shall consider the extent to which pro-
viding such a safe harbor for evidence-based
contingency management incentives may result
in any of the factors described in paragraph
(2).

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