

VIA ELECTRONIC SUBMISSION: <http://www.regulations.gov>

December 17, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services (CMS)
Department of Health and Human Services
Attention: CMS-1809-FC
P.O. Box 8016,
Baltimore, MD 21244-8016

Dear Administrator Brooks-LaSure:

The Association of Diabetes Care & Education Specialists (ADCES) appreciates the opportunity to comment in response to the *Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems, etc.* final rule (CMS-1809-FC) as published in the *Federal Register* on November 27, 2024 (the “final rule”).

ADCES is an interdisciplinary professional membership organization dedicated to improving prediabetes, diabetes, and cardiometabolic care through innovative education, management, and support. With more than 12,000 professional members including nurses, dietitians, pharmacists, and others, ADCES has a vast and diverse network of practitioners working to optimize care and reduce complications. ADCES supports an integrated care model that lowers the cost of care, improves experiences, and helps its members lead so better outcomes follow.

Prior Communications on Telehealth DSMT and MNT from the HOPD Setting

In response to comments on the proposed rule, CMS writes in the final rule (emphasis ours):

*“Section 4113 of the CAA, 2023 expanded the range of practitioners eligible to furnish telehealth services only through CY 2024, which included PTs, OTs, and SLPs. Beginning January 1, 2025, these practitioners will no longer be able to bill for Medicare telehealth services. **Consequently**, beginning January 1, 2025, we likewise will no longer pay for outpatient therapy, DSMT, and MNT services when furnished remotely by hospital staff to beneficiaries in their homes.”*

We take exception with CMS’s implication that the status of PT, OT, and SLP as distance site providers is causally related to payment for telehealth DSMT and MNT. While we agree that, as of the publication date of the final rule, payment for “outpatient DSMT and MNT services when furnished remotely by hospital staff to beneficiaries in their homes” could continue into 2025, the reason for this was because Congress had not extended originating site flexibilities to allow beneficiaries to receive services via telehealth in their homes and not because of anything related to the distance site provider status of PT, OT, or SLP professionals.

This conflation of DSMT and MNT with other “therapy services” is a longstanding issue within rules and sub-regulatory guidance related to the hospital outpatient setting. In the July 2020 Interim Final Rule (IFC) (CMS-5531-IFC), CMS erroneously grouped DSMT and MNT under therapy services. Doing so led to further error with CMS stating that the Medicare laws do not have a benefit category that “would allow registered dietitians [sic] the ability to directly bill Medicare for their services”¹ despite RDs being Medicare billable providers for over 2 decades and eligible distance site providers for nearly as long.^{2,3,4}

Outpatient therapy services are a distinct benefit category under Medicare Part B. Prior to the PHE, outpatient therapy services were not on the list of Medicare approved telehealth services such that physical therapists (PTs), occupational therapists (OTs), and speech language pathologists (SLPs) were not recognized as distant site providers for telehealth services. While CMS loosely addressed this issue in the CY21 Fee Schedule,⁵ we believe that initially placing DSMT and MNT with outpatient therapy services⁶ during the public health emergency further contributed to confusion as to whether these services were being covered temporarily or permanently when delivered via telehealth.

Request for an Interim Final Rule

As noted in the final rule, the authorities extended in the CCA, 2023, are set to expire after December 31, 2024, and therefore the agency is currently unable to say that many aspects of telehealth will be paid for in 2025 and beyond when delivered to a beneficiary in their home. However, it is widely anticipated that Congress will further extend Medicare’s telehealth flexibilities for another one to two years. *When and if that occurs, we urge the agency to rapidly issue an interim final rule reflecting the extension of telehealth DSMT and MNT from the HOPD setting.*

Given the conflation of PT, OT, and SLP distance site provider status and the continuation of telehealth DSMT and MNT payment outlined above, we implore the agency to fully disentangle DSMT and MNT from other “therapy services” in the interim final rule and any future rulemaking on this issue and to no longer list DSMT and MNT in a serial list with other “therapy services.” We request that the distinct regulatory status of these services be treated as such and addressed in separate sections of future rules.

It is imperative that the agency’s rules and any associated guidance clearly and consistently explain the prevailing policies and rationale. Over the last four and a half years—as both the member association for diabetes care and education specialists and one of two CMS-recognized accrediting organizations for DSMT—we have fielded countless questions from programs and hospital billing

¹ CMS-5531-IFC

² 42 CFR §410.72

³ 42 CFR §410.78(b)(2)(viii)

⁴ 42 CFR §410.78(b)(2)(x)

⁵ CMS-1734-F

⁶ Example of Hospital Outpatient Therapy, Counseling and Education Services that May be furnished to a Beneficiary in the Hospital by Remote Hospital Clinical Staff Using Telecommunication Technology During the COVID-19 Public Health Emergency. <https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers>. Accessed March 21, 2024.

departments who have struggled to interpret agency-issued regulations and guidance related to DSMT.

We have seen health care systems consider voluntarily ending their telehealth DSMT offerings (to be replaced by in-person-only services) out of an abundance of caution about whether payment for telehealth DSMT from the HOPD setting would extend, e.g., past the end of the public health emergency in May 2023, past the end of CY 2023, and now past the end of CY 2024. In the latter case, we acknowledge that the uncertainty rests with Congress, but the uncertainty in May and December of 2023 was agency driven.

We also request one point of clarification in the interim final rule related to this section. In the proposed rule, CMS states:

*“To the extent that therapists and DSMT and MNT practitioners continue to be distant site practitioners for purposes of Medicare telehealth services, we anticipate aligning **our policy** for these services with policies under the PFS and continuing to make payment to the hospital for these services when furnished by hospital staff.” [Emphasis ours]*

To help us better educate our members and accredited DSMT programs and their hospital billing departments, we request that the interim final rule be specific as to which “policy” CMS is referring to and exactly what changes are proposed to be made as these details were not included in the proposed rule or the final rule.

ADCES appreciates the opportunity to comment on this final rule. We hope to work with CMS to provide clarity to HOPD-based DSMT programs to improve access to care for people with diabetes. Please contact ADCES director of advocacy Hannah Martin at hmartin@adces.org should you have any questions regarding ADCES’ comments.

Sincerely,



Matthew Hornberger, MBA, Chief Executive Officer



Hannah Martin, MPH, RDN, Director of Advocacy