

approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive order. This proposed rule to approve the District of Columbia's Nitrogen Oxides Emissions Budget Program regulations to implement Phase II of the OTC MOU

does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 13, 2000.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 00-26901 Filed 10-18-00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA109-5050b; FRL-6887-6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of Approval of Removal of TSP Ambient Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of removing references to total suspended particulate (TSP) ambient standards and levels from its regulations for ambient air quality standards and for air pollution episode prevention. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based upon this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 20, 2000.

ADDRESSES: Written comments should be addressed to Mr. Denis Lohman, Acting Chief, Technical Assessment Branch, Mailcode 3AP22, U.S. Environmental Protection Agency,

Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT:

Ruth E. Knapp, (215) 814-2191, at the EPA Region III address above, or by e-mail at knapp.ruth@epa.gov.

SUPPLEMENTARY INFORMATION: For further information on this SIP revision related to removal of TSP ambient standards and levels from Virginia's regulations, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: October 5, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00-26909 Filed 10-18-00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 410

[HCFA-1088-P]

RIN 0938-AJ71

Medicare Program; Clinical Social Worker Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would permit separate Medicare Part B payment for certain psychotherapy services of clinical social workers furnished to a skilled nursing facility resident whose stay is not covered by Medicare. This rule would benefit residents of skilled nursing facilities who receive psychological services from clinical social workers.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 18, 2000.

ADDRESSES: Mail written comments (one original and three copies) to the following address ONLY: Health Care Financing Administration, Department of Health and Human Services,

Attention: HCFA-1088-P, P.O. Box 8013, Baltimore, MD 21244-8013.

If you prefer, you may deliver by courier, your written comments (one original and three copies) to one of the following addresses:

Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 or Room C5-14-03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Comments mailed to those addresses may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA-1088-P.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443-G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (Phone (202) 690-7890).

FOR FURTHER INFORMATION CONTACT: Paul W. Kim, (410) 786-7410.

SUPPLEMENTARY INFORMATION:

I. Background

Section 6113 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989) (Public Law 101-239) amended section 1861(s)(2) of the Social Security Act (the Act) to provide coverage of clinical social worker (CSW) services under Medicare Part B. OBRA 1989 also amended section 1861(hh) of the Act and defined CSW services. This definition included services performed by a CSW for the diagnosis and treatment of mental illness but excluded those services furnished to an inpatient of a skilled nursing facility (SNF) that the SNF is required to provide for participation in Medicare.

On December 29, 1993, we published a proposed rule (58 FR 68829) on a number of issues regarding services of CSWs and clinical psychologists (CPs). That proposed rule also solicited public comment to identify any CSW service that a SNF is not already required to provide under section 1819(b)(4)(A) of the Act. Based on the comments we received at that time, we were unable to identify any specific service performed by CSWs for SNF residents that a SNF was not required to provide. Consequently, under the final rule (63 FR 20110) on CSW and CP services published on April 23, 1998, separate

Medicare Part B payment would not be made for CSW services furnished to SNF residents beginning June 22, 1998. We decided to delay implementation of the new rule.

II. Provisions of the Proposed Regulations

The SNF certification standards at section 1819(b)(4)(A)(i) through (b)(4)(A)(vii) of the Act contain requirements relating specifically to social services, along with a broader mandate for SNFs to furnish a variety of services to the extent necessary “* * * to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident * * *.” As we observed in the preamble to the April 23, 1998 final rule, defining the scope of coverage under the Part B CSW benefit as excluding the services required under this more sweeping mandate would effectively preclude any CSW coverage whatsoever in the SNF setting, since this broad mandate could be interpreted to encompass virtually any service that a social worker conceivably could perform in this setting.

Upon further consideration, however, we believe that the manner in which section 1861(hh) was drafted in the original CSW legislation indicates that the statute does not require the exclusion of CSW coverage in this setting to be so absolute. Instead, we believe that it is appropriate to draw a distinction between a set of services that the SNF certification standards require social workers to furnish (and which, thus, fall outside the scope of the CSW benefit) and other services (which remain coverable under the CSW benefit).

We believe one possible approach would be to distinguish between those certification standards that, on the one hand, pertain specifically and exclusively to social workers—that is, the “medically-related social services” described in section 1819(b)(4)(A)(ii) of the Act, and the “social services” for which section 1819(b)(7) of the Act requires SNFs with more than 120 beds to hire a full-time social worker—and, on the other, those “specialized rehabilitative services” described in section 1819(b)(4)(A)(i) of the Act, which can be furnished by a variety of different practitioner types that in some cases may include social workers. We believe that the psychotherapeutic services addressed in this proposed rule belong to the latter category and, as such, should not be subject to the coverage exclusion for CSW services furnished in SNFs.

Under this proposal, we would pay CSWs for the (Physicians’) Current Procedural Terminology (CPT) codes (4th Edition, 1999; copyrighted by the American Medical Association) which represent psychotherapy services that are furnished to SNF residents and billed by CPs and that the CSWs are legally authorized to perform under State law. Specifically, we would pay for CPT codes 90801, 90802, 90816, 90818, 90821, 90823, 90826, 90828, 90846, 90847, 90853, and 90857. However, we would not pay under Part B for any other services that CSWs furnish to SNF residents, since we regard these services (for example, care planning and discharge planning) as already required to be furnished by social workers under the SNF participation requirements.

Further, this proposal would not affect payment for CSW services furnished to an SNF resident during the course of an inpatient stay that is covered under Medicare Part A. In accordance with section 1888(e) of the Act, as established by section 4432(a) of the Balanced Budget Act of 1997 (BBA 1997, Public Law 105-33), an SNF receives payment under the prospective payment system (PPS) for virtually all of the services that its residents receive during a covered Part A stay, except for a short list of excluded services specified in section 1888(e)(2)(A)(ii) of the Act. Because CSW services do not appear on this statutory exclusion list, they are included within the global per diem payment that Part A makes to the SNF for the Medicare-covered stay, and the CSW must look to the SNF, rather than to Part B, for payment. Accordingly, we would not make any additional payment under the Part B CSW benefit for services that are furnished to SNF residents during a covered Part A stay, because section 1833(d) of the Act expressly prohibits payment under Part B for any service that is covered under Part A.

Similarly, this proposal would not affect the SNF consolidated billing requirements established by section 4432(b) of the BBA 1997. Under sections 1842(b)(6)(E) and 1862(a)(18) of the Act, a SNF must bill Medicare for both Part A and Part B services that are furnished to its residents, except for those services that the Act specifically excludes, as discussed above. Due to systems constraints in connection with achieving Year 2000 (Y2K) compliance, we have delayed the implementation of SNF consolidated billing with respect to those SNF residents who are not in a covered Part A stay. However, once this aspect of SNF consolidated billing is implemented, Part B bills for Medicare

CSW services furnished to SNF residents during a noncovered stay would have to be submitted by the SNF rather than by the CSW. Exempting CSW services from the SNF consolidated billing provision would require legislation to amend the Act by adding these services to the list of statutory exclusions discussed above.

III. Collection of Information Requirements

This document does not impose any information collection and record keeping requirements subject to the Paperwork Reduction Act of 1995 (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of PRA.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impacts of this proposed rule as required by Executive Order (E.O.) 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96-354). E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more annually). We have determined that this proposed rule is not a major rule with economically significant effects. However, we have prepared a voluntary RFA to furnish additional information.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$5 million or less annually. For purposes of the RFA, intermediaries and carriers are not considered to be small entities.

Individuals and States are not included in the definition of a small entity. According to estimates provided by the National Association of Social Workers, there were approximately 18,000 clinically trained social workers serving the 1.6 million residents of the nation's 17,000 nursing homes in 1999. Because this proposed rule permits approximately \$12 million in annual payments for CSW services that the final rule of April 23, 1998 would have eliminated, this proposed rule would have a significant positive impact on a substantial number of small entities. This rule would also benefit residents of SNFs who receive mental health services from clinical social workers.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. This proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more. This proposed rule would have no consequential effect on State, local, or tribal governments, and the private sector cost of this rule falls below these thresholds as well.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of E.O. 12866, this regulation was reviewed by OMB.

We have reviewed this proposed rule under the threshold criteria of E.O. 13132, Federalism. We have determined that the proposed rule would not significantly affect the rights, roles, and responsibilities of States.

List of Subjects in 42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

For the reasons set forth in the preamble, 42 CFR part 410 is proposed to be amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 410.73, paragraph (b) introductory text and (b)(2) introductory text are republished, and paragraph (b)(2)(ii) is revised to read as follows:

§ 410.73 Clinical social worker services.

* * * * *

(b) *Covered clinical social worker services.* Medicare Part B covers clinical social worker services.

* * * * *

(2) *Exception.* The following services are not clinical social worker services for purposes of billing Medicare Part B:

* * * * *

(ii) Services furnished by a clinical social worker to an inpatient of a Medicare-participating SNF if the services are required by the requirements for participation for SNFs at §§ 483.15 and 483.45 of this chapter.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 7, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: March 27, 2000.

Donna E. Shalala,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register October 13, 2000.

[FR Doc. 00-26737 Filed 10-18-00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00-168; FCC 00-345]

Standardized and Enhanced Disclosure of Commercial Television Station Public Interest Obligations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.