ASHNHA

ALASKA STATE HOSPITAL & NURSING HOME ASSOCIATION

ELECTRONIC MAIL

October 13, 2020

Susan Miller Dunkin
Department of Health & Social Services
Division of Health Care Services
4501 Business Park Blvd., Building L
Anchorage, AK 99503
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RE: Public Comments to Proposed Changes to 7 AAC 140.310 for Outpatient Hospital Observation Services

Dear Ms. Dunkin,

The Department of Health and Social Services ("DHSS") proposes amending 7 AAC 140.310 by adding a new subsection that specifies the "department will pay for outpatient hospital observation services, *not to exceed 48 hours*, only if a recipient's condition warrants evaluation." (emphasis added).

Currently, in accordance with the Alaska Medicaid Provider Billing Manual, "[o]bservation services begin when the patient is placed in an observation bed, and cannot exceed 24 hours." Therefore, the proposed changes to regulation effectively extend reimbursable hospital observation services from 24 hour to 48 hours.

However, as a matter of policy, since September 1, 2018, Alaska Medicaid has been reimbursing hospitals up to 120 hours for hospital observation services rendered to Title 47 ex parte patients waiting for an acute psychiatric bed in a Designated Evaluation Treatment ("DET") facility, such as the Alaska Psychiatric Institute ("API").

API has been historically overwhelmed by the demand for services, and customarily operates with a waitlist for patients needing admission to an acute psychiatric bed. Given the high level of demand, and the lack of available services throughout the behavioral health continuum of care in Alaska, has resulted in Title 47 ex parte patients "boarding" in hospital emergency departments for days and weeks at a time.

Therefore, while the proposed changes to regulation formally extend reimbursable hospital observation services from 24 hours to 48 hours, the changes actually reduce reimbursable hospital observation services rendered to Title 47 ex parte patients waiting for an acute psychiatric bed in a DET facility from 120 hours to 48 hours.

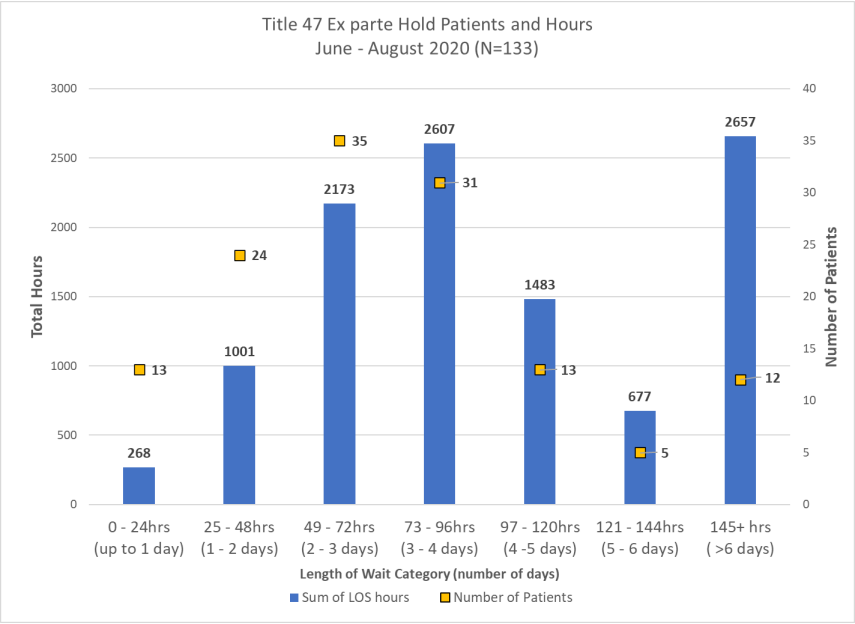
The Alaska State Hospital & Nursing Home Association ("ASHNHA") conferred with Alaska's hospitals to understand the impact of this change—especially the reduction in reimbursable hours from 120 hours to 48 hours, and whether this change makes sense given the current state of Alaska's behavioral health continuum of care. Based on this work, ASHNHA opposes the proposed changes to regulation.

Impact of Proposed Changes to Regulation is both Significant and Negative

ASHNHA took a sample of Title 47 ex parte patients "boarding" in emergency departments from four hospitals to evaluate trends and impact. Note, the Title 47 ex parte patients from these four hospitals represent a vast majority of the ex parte population boarding in hospital emergency departments across Alaska, so this sample is a statistically valid representation of the system at large.

The four hospitals provided the number of ex parte patients that boarded in their emergency departments as they waited for an inpatient psychiatric bed in a DET facility in June, July, and August. The four hospitals also provided the number of hours each patient spent waiting in the emergency department for the inpatient psychiatric bed. Note, patients with ex parte orders that were legally quashed or rescinded are not included in this dataset.

Over the three-month period from June through August 2020, there were 133 ex parte patients in these hospitals who waited for a combined 10,866 hours for an inpatient psychiatric bed in a DET facility. This is the equivalent of 453 patient days. The graph below organizes the patient count and hours spent waiting / boarding by the following groupings: 0-24 hours; 25-48 hours; 49-72 hours; 73-96 hours; 97-120 hours; 121-144 hours; and, 145+ hours.



The impact of applying the proposed change to regulations (i.e. the "48-hour standard") to this population is significant. Of the 133 total patients over the three-month period, 96 of them (or 72% of the total patients) boarded in a hospital emergency department for longer than 48 hours. The proposed 48-hour standard would pay for 5,877 hours, which is 54% of the total hours spent boarding. This means that 4,989 hours would not be reimbursed at all by Alaska Medicaid, which is the equivalent to 208 days of patient care over just a three-month period simply not being paid for at all. If these statistics are extrapolated over a year, it amounts to 832 days of uncompensated patient care.

For purposes of comparison, if the existing policy of reimbursing for up to 120 hours (i.e. the "120-hour standard") stays in place, the impact is as follows. Of the 133 total patients over the three-month period, 17 of them (or 13% of the total patients) boarded in a hospital emergency department for longer than 120 hours. The 120-hour standard covers 9,572 hours, which is 88% of the total hours spent boarding. This means 1,294 hours are still not reimbursed at all by Alaska Medicaid, which is the equivalent to 54 days of patient care over just a three-month period simply not being paid for at all.

Applying the 48-hour standard clearly is a significant impact that is also harmful to hospital resources. General acute care hospitals are not designed or equipped to handle Title 47 ex parte patients needing inpatient psychiatric care. Medical floors are not secure, which means there generally is no other place to house these patients other than in the emergency department. Unfortunately, the emergency department is not an appropriate environment, especially for overnight stays that last days or weeks. Additionally, without a specially designed care environment and trained staff, hospitals must dedicate nurses, techs, and even security guards to monitor these patients 24 hours per day. This not only takes staff away from other care assignments, but it also represents an inefficient and unnecessarily expensive approach to care.

Once one considers the staffing expense, the expense of dedicating an emergency department bed to a single patient for multiple days, and the expense of providing around the clock care and meals, the Medicaid rate of reimbursement for observation—regardless of the 48-hour standard or 120-hour standard—often does not even cover the cost of care. To now cut that reimbursement to $0 for 208 days of care over a three-month period through these proposed changes to regulations, and combine that with the already below cost reimbursement, puts enormous financial strain on hospitals.

Alaska's Behavioral Health Continuum does not Support Proposed Changes

While the proposed changes to regulation amount to a significant negative impact on hospitals, it is worth considering whether there are other circumstances that support this change. Simply stated, is the behavioral health continuum of care better today than it was when DHSS initiated the 120-hour standard in 2018. Based on capacity limitations at API, the extensive boarding still occurring in hospital emergency departments, and the lack of community behavioral health resources, the behavioral health continuum of care is no better

today than it was in 2018.

When the 120-hour standard was implemented in September 2018 to relieve pressure from the significant amount of boarding that was occurring with Title 47 ex parte patients in hospital emergency departments, the average daily census at API was 55 patients. While API has made positive strides to improve capacity over the last few months, current bed capacity is capped at 60, and only 50 of those beds are available for Title 47 ex parte patients. Given the bed shortage at API and given the overall shortage of per capita treatment beds in the state (even when API is operating at its full 80 bed capacity), it is clear that the situation has not meaningfully improved.

While there are efforts underway to address the broken system of behavioral health care in the state of Alaska, such as the recent implementation of the 1115 waiver and the pursuit of a crisis system of care similar to the Crisis Now model, these efforts have not yet had the time necessary to yield the benefits of increased care and a better 'safety net' for patients. Hospitals across the state, including API, continue to be overrun with need, and providers are frustrated by the lack of options for patients who need specialized behavioral treatment to improve their wellbeing. In sum, there are no other system-based circumstances that support the proposed changes to regulation.

Conclusion

ASHNHA appreciates the opportunity to provide comment on the proposed changes to 7 AAC 140.310. The negative impact of reducing reimbursement from 120 hours to 48 hours for hospital observation services rendered to Title 47 ex parte patients, especially when the behavioral health continuum of care is no better today than it was when DHSS initiated the 120-hour standard in 2018, is a harmful policy change. ASHNHA opposes the proposed changes to regulation and encourages DHSS to focus on other ways for partnering on reducing wait times for inpatient psychiatric beds, especially through improvements to the behavioral health continuum of care. Deploying harsh cuts to Medicaid reimbursement for essential care is not the answer.

Sincerely,

Jared C. Kosin, JD, MBA
President & CEO