AMERICAN COUNSELING ASSOCIATION

Public Health Programs and Licensed Professional Counselors: *Practice Impact and Advocacy Needs*

March, 2005

Publicly-funded health care programs play a large role in the delivery and financing of mental health and substance abuse services. This report summarizes the practice impact and advocacy needs for counselors on the major federal public health care programs, including:

- **Medicaid**, the state-operated and jointly state-and-federally financed health care program for lower-income families without health insurance (on **page 1**);
- the **Federal Employees Health Benefits Program (FEHBP)**, the health insurance program operated by the federal government for its employees (**page 4**);
- **Medicare**, the federally-defined and financed health care system for older Americans and Americans with disabilities (covered on **page 6**);
- **TRICARE**, the healthcare program operated by the Department of Defense for military dependents, retirees, and other personnel, and other programs operated by the Department of Defense (on **page 9**);
- the **National Health Service Corps**, a federally-funded initiative to improve Americans' access to health care professionals (on **page 12**); and
- **HIPAA privacy regulations**, affecting the use and disclosure of health treatment information (on **page 13**).
- Also included is a collection of **useful statistics** for arguing for coverage and recognition of counselors under public and private programs (on **page 17**).

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ABOUT THE INFORMATION IN THIS REPORT

This report summarizes the impact of federal programs on individual counselors, including suggestions on advocating to improve the programs' recognition of professional mental health counselors. These are all separate programs, formulated under their own laws, regulations, and agencies.

We would like future versions of this report to be as informative and helpful as possible. To that end, please let us know if you have suggestions for any additions or improvements. To join the ACA Government Relations e-mail listserve, send an e-mail with your name and address to Christie Lum at "clum@counseling.org".

For additional information on a particular program, please contact the agency indicated.

Medicaid

Program Description

Medicaid is the nation's major public health program for low-income Americans, financing health and long-term care services for more than 50 million people—a source of health insurance for 38 million low-income children and parents and a critical source of acute and long-term care coverage for 12 million elderly and disabled individuals, including more than 6 million low-income Medicare beneficiaries. The federal government matches what states spend, at a rate which varies based on a formula which takes into account each state's poverty rate, number of uninsured individuals, and other factors. On average, the federal government pays for roughly 57% of all Medicaid costs.

Medicaid is a significant payor of mental health services, accounting for almost one in five dollars spent in this area. All state programs must cover certain services (including those of physicians and psychiatrists) and populations in order to receive federal funding. However, states have considerable leeway in deciding how to structure their programs, and given the steady increases in health care costs over the past decade, most states are trying to limit or scale back what and who they cover. States typically do not cover the services of all non-physician mental health professionals in the fee-for-service portion of their Medicaid programs.

All states operate at least part of their Medicaid program under a waiver of certain federal requirements, usually in order to provide services through managed care organizations (MCO's). States typically contract with MCO's to provide services, which in turn may subcontract with other organizations for provision of services under certain parts of the benefit package. Consequently, decisions regarding providers' participation in plans are frequently made by managed care organizations.

Counseling Viewpoint

States have the option of covering professional counselors under their Medicaid programs. The federal government requires state Medicaid programs to cover physicians' services, but leaves it up to states to determine what non-physician provider services they want to cover. Although a 1997 survey by ACA found that twelve states covered licensed professional counselors in their fee-for-service Medicaid programs (as compared to 17 states covering the services of licensed clinical social workers), states are continuing to shift more and more of their beneficiaries into managed care organizations, in an attempt to constrain program costs.

Under the Balanced Budget Act of 1997, Medicaid managed care plans are prohibited from discriminating against providers--including counselors--on the basis of their type of license (see excerpt on page 3). A copy of this section of the Act is included on the facing page. Thus, although counselors in a given state may not be covered under that state's fee-for-service health plan, managed care plans contracting with the state to provide services to Medicaid beneficiaries cannot have a policy of excluding all professional counselors from their panels.

Getting your services covered under Medicaid is not a bed of roses, however. Historically, payment rates for Medicaid services are low. A 1998 study of Medicaid fees paid to physicians found that they averaged only 64 percent as much as fees paid by Medicare. As with many government-funded programs there are considerable paperwork requirements to stay on top of. Further complicating matters is the fact that services are frequently subcontracted or "carved-out": agency "A" may be awarded the contract for all health care services, and may then subcontract with organization "B" to provide a subset of the benefit package (i.e., mental health services), which may then subcontract with individual direct service providers. This last piece of the financial pie can be very small.

The Policy Front

Since each state determines what its Medicaid program is going to look like, advocacy to gain coverage of counselors under state Medicaid programs must focus on state legislatures and agencies. Other mental health provider professions are also advocating for greater inclusion in Medicaid and other federal plans included elsewhere in this guide. It is imperative that counselors continue the push for recognition and reimbursement through this program. Medicaid is one of the principle sources of financing for mental health services, and it is imperative that beneficiaries have the option of choosing professional counselors as their providers. The final section of this guide, ***"Counseling Works!"***, includes materials on the effectiveness of counseling and counselors that can assist in your advocacy process. Counselors are urged to work toward the inclusion of professional counselors' services under their state's defined Medicaid benefit package, and inclusion on the panels of Medicaid managed care plans.

Counselors are also encouraged to advocate for maintaining and safeguarding the Medicaid program from drastic budget cuts or fundamental changes. Medicaid is a key part of the country's social safety net, and is more--not less--important in periods of economic sluggishness. Although the question facing states is not "if" to cut Medicaid spending but "by how much," program reductions must weigh in mind the effects such cuts will have on beneficiary populations and the broader health care system.

Counselor Checklist

√ Check with your state association concerning their efforts to impact Medicaid on your behalf. A state association directory can be found at **http://www.counseling.org** and following the link to "Divisions and Regions."

√ Contact your state's Medicaid offices, and ask for information concerning their inclusion of professional counselors as providers. The offices can be found on the web pages of the federal Centers for Medicare and Medicaid Services (CMS), which oversees the program, at **http://www.cms.hhs.gov/medicaid/allStateContacts.asp**. The main Medicaid web site is at **http://cms.hhs.gov/medicaid**.

√ If your state does not cover counselors under its Medicaid program, write to your state's Medicaid agency and to your state legislators urging that counselors' services be covered. Stress the cost-effectiveness of counselors, the cost-effectiveness of timely and appropriate mental health care, and the need for both access to providers and consumer choice of provider in mental health treatment.

√ Contact the Medicaid managed care organizations operating in your area to ask about being added to their panel.

√ Advocate against reckless and inappropriate cuts in Medicaid. Write or call your state and federal legislators, write letters to the editor, or write articles for your association newsletter. The Kaiser Family Foundation is an excellent source of information on Medicaid, online at **http://www.kff.org**. Another great resource is FamiliesUSA, an advocacy organization focusing on health related issues, at **http://www.familiesusa.org**.

Excerpt from Title IV, Subtitle H, Chapter 1, Sec. 4704(a) of P.L. 105-33, the "Balanced Budget Act of 1997":

be owed by the individual if the organization had directly provided the services.

"(7) ANTIDISCRIMINATION.-A medicaid managed care organization shall not discriminate with respect to participation, reimbursement, or indemnification as to any provider who is acting within the scope of the provider's license or certification under applicable State law, solely on the basis of such license or certification. This paragraph shall not be construed to prohibit an organization from including providers only to the extent necessary to meet the needs on the organization's enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the organization.

"(8) COMPLIANCE WITH CERTAIN MATERNITY AND MENTAL HEALTH REQUIREMENTS.—Each medicaid managed care organization shall comply with the requirements of subpart 2 of part A of title XXVII of the Public Health Service Act insofar as such requirements apply and are effective with respect to a health insurance issuer that offers group health insurance coverage.".

(b) PROTECTION OF ENROLLEES AGAINST BALANCE BILLING THROUGH SUBCONTRACTORS.—Section 1128B(d)(1) (42 U.S.C. 1320a-7b(d)(1)) is amended by inserting "(or, in the case of services provided to an individual enrolled with a medicaid managed care organization under title XIX under a contract under section 1903(m) or under a contractual, referral, or other arrangement under such contract, at a rate in excess of the rate permitted under such contract)" before the comma at the end.

42 USC 1396u-2

SEC. 4705 QUALITY ASSURANCE STANDARDS.

(a) IN GENERAL.—Section 1932 is further amended by adding at the end the following:

"(c) QUALITY ASSURANCE STANDARDS.—

"(1) QUALITY ASSESSMENT AND IMPROVEMENT STRATEGY.—

"(A) IN GENERAL.—If a State provides for contracts with medicaid managed care organizations under section 1903(m), the State shall develop and implement a quality assessment and improvement strategy consistent with this paragraph. Such strategy shall include the following:

"(i) ACCESS STANDARDS.—Standards for access to care so that covered services are available within reasonable timeframes and in a manner than ensures continuity of care and adequate primary care and specialized services capacity,

"(ii) OTHER MEASURES.—Examination of other aspects of care and service directly related to the improvement of quality of care (including grievance procedures and marketing and information standards),

"(iii) MONITORING PROCEDURES.—Procedures for monitoring and evaluating the quality and appropriateness of care and services to enrollees that reflect the full spectrum of populations enrolled under the contract and that includes requirements for provision of quality assurance data to the State using the data and information set that the Secretary has specified for use under part C of title XVIII or such alternative

Federal Employees Health Benefits Program

Program Description

The Federal Employees Health Benefits Program (FEHBP) provides health care coverage for federal employees, their dependents and federal retirees (non-military). The program is administered by the federal Office of Personnel Management (OPM), and covers an estimated 9 million people.

There are more than 300 separate FEHBP plans. Each year, health plans across the country submit bids to provide coverage for federal employees based on requirements laid out in the laws and regulations regarding the program. These requirements include specifications for benefit packages and covered services.

Counseling Viewpoint

Under current law, participating plans are required to cover the services of clinical psychologists and clinical social workers. FEHBP plans generally are not required to cover professional counselors' services, but may choose to do so. Consequently, counselors can and should advocate for coverage under FEHBP plans exactly as they would any private sector health care plan (see sample letter on page 5). The ***"Counseling Works!"*** section at the rear of this report contains a collection of statistics which may be useful in arguing the effectiveness of counseling services.

Federal law stipulates that in states determined to be medically underserved, plans ***must*** cover the services of all state-licensed health professionals, including counselors. States deemed medically underserved for calendar year 2005 include: Alabama, Alaska, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Mexico, North Dakota, South Carolina, South Dakota, Texas, and Wyoming.

The Policy Front

Receiving care from a professional counselor should be an option for the millions of current and former federal employees and their families. The lack of such an option hurts these workers and unfairly limits professional counselors practice in many states.

ACA is exploring the option of pushing for legislation or regulations to prohibit FEHBP plans from discriminating against counselors and other health care providers on the basis of their type of license. Similar provisions have been enacted into law for both the Medicaid and Medicare programs, and have been passed by both the House and the Senate as part of patient protection legislation.

Counseling is recognized as a core mental health profession under the Public Health Services Act. Under laws enacted in 22 states, healthcare plans are required to either include or offer coverage of licensed professional counselor services. These states' experience indicate that coverage of professional counselors is cost effective, and does not result in significant increases in utilization or overall plan costs.

Counselor Checklist

√ Contact the FEHBP plans in your area and encourage them to cover the services of licensed professional counselors, using the ***"Counseling Works!"*** data at the end of this report.

√ For more information on the program, its policies, and participating plans, hit the Office of Personnel Management's web page at **http://www.opm.gov/insure/health/index.asp**.

Sample Letter Urging FEHBP plan Coverage of Professional Counselors

{Date}

{Address}

Dear Sirs:

I am writing to ask your health plan to consider covering mental health services when provided by a licensed professional counselor, such as myself, for federal employees. It is my understanding that federal laws and regulations laying out the Federal Employee Health Benefits Program give you the latitude to cover LPC's.

Licensed Professional Counselors are highly trained and respected providers and are covered by the overwhelming majority of private insurance plans. As an LPC, I have met professional preparation requirements including a master's degree in, two years of supervised experience, and passage of a national clinical exam. LPCs are highly cost-effective service providers.

I have particular expertise in working with clients in the areas of _____. {include other information on why the plan should cover you}

Thank you for your consideration. If you have any questions, please feel free to contact me.

Sincerely,

{signature
your address and other contact information}

Medicare

Program Description

Medicare is the single largest health care plan in the United States, covering roughly 35 million Americans ages 65 and over and 6 million Americans with disabilities. Unlike Medicaid, the program is completely financed by the federal government under federal laws and regulations. Medicare is so omnipresent that its policies have a huge impact on the daily operations of most health care facilities.

Medicare's benefit package is written by Congress and administered within each state by Medicare financial intermediaries (known as "carriers") under rules and regulations promulgated by the federal Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration, or HCFA). Medicare's benefit package was changed in 1989 to cover the services of both clinical psychologists and clinical social workers. The program does not recognize either licensed professional counselors or marriage and family therapists as covered providers.

For this and other reasons, Medicare's mental health benefit is outdated, and is not meeting the treatment needs of beneficiaries. Older Americans are the demographic group most likely to commit suicide, and of those who commit suicide, 70% had seen their physician within a month of doing so, and 40% had seen their physician within a week of doing so. It is estimated that only one in three older Americans with a mental disorder sees a mental health specialist. These statistics and others highlight the need to improve Medicare's mental health benefit. In addition to failing to cover the array of recognized core mental health professionals, Medicare law subjects all outpatient mental health services to a 50% copayment requirement, compared to an only 20% copayment requirement for all other types of care.

Counseling Viewpoint

It is possible for licensed professional counselors to be reimbursed indirectly for services provided to Medicare beneficiaries, under coverage of what are known as "incident to" services.

Medicare's benefit package covers the services of physicians, psychologists, clinical nurse specialists, nurse practitioners, and physician assistants, as well as services incident to these providers' services. Counselors and other state-licensed health professionals can provide these "incident to" services and be reimbursed indirectly by the Medicare-covered provider if certain criteria are met:

- services must be of a type which is commonly furnished in a physician's or other provider's office;
- the services must be an integral, although incidental, part of the professional services furnished by the physician or other provider;
- the services must be performed under the supervision of the physician or other provider, and the physician or other provider should be immediately available to provide supervision of the services;
- the services must be included in the physician's or other provider's bill;
- the services must be furnished by an employee of the physician or other provider, or the same entity that employs the physician or other provider.

There are no detailed stipulations in either federal law or CMS regulations specifically on Medicare coverage of "incident to" services in the area of mental health treatment. Individual state Medicare Part B carriers (Part B of Medicare covers non-hospital based treatment) are thus free to establish their own policies regarding which providers may or may not provide "incident to" services. If in doubt, check with your state Medicare carrier to see what their policy covers.

There are two other parts of Medicare's benefit package under which counselors may be reimbursed indirectly. One of these is as a provider of services within partial hospitalization programs. Medicare's partial hospitalization benefit includes coverage of family counseling, which can be provided by any state-licensed professional operating within the scope of her/his practice. In addition, skilled nursing facilities may provide psychotherapy to their residents using any state-authorized provider. In both of these cases, the facility is paid a fixed amount of money

per beneficiary, under Medicare's prospective payment system, to cover the cost of care, including the cost of any psychotherapy services provided. It is the facility which receives payment, and which may then reimburse the actual service provider. Some providers operating in skilled nursing facilities--including clinical psychologists --are reimbursed directly by Medicare, without payment for their services being "bundled" in with payments to the facility for other aspects of treatment. Consequently, skilled nursing facilities often choose to save money by having psychotherapy services billed separately by the individual covered provider.

The Policy Front

Gaining Medicare coverage of counselors is one of ACA's highest priorities. In the 108th Congress (2003-2004), the Senate approved Medicare coverage of state-licensed counselors as part of its Medicare prescription drug bill. Unfortunately, the counselor/marriage and family therapist provision was removed in conference committee consideration of the legislation. This year, Senators Craig Thomas (R-WY) and Blanche Lincoln (D-AR) are expected to again introduce legislation to establish coverage of licensed professional counselors and marriage and family therapists, as they did in 2003.

We are focusing our efforts on the House of Representatives. Without stronger support among House members, our provision simply will not be enacted. In order to help generate momentum, and give our members across the country a rallying point on this issue, we are asking House members to consider introducing counterpart legislation to the Thomas-Lincoln legislation in the Senate, or legislation to establish only coverage of counselors. Gaining House members' attention will require grassroots contacts from counselors!

The broader prospects for consideration of Medicare legislation remain unclear. There are several conflicting priorities for lawmakers, and Congressional leaders may shy away from reopening debate on such volatile issues as the costs and solvency of the program and the adequacy and structure of the Medicare prescription drug benefit. In the meantime, it is imperative that we broaden support for counselor coverage.

Counselors Checklist

- √ Contact your Representative and ask him or her to consider introducing legislation to establish Medicare coverage of state-licensed professional counselors, similar to legislation to be introduced shortly in the Senate by Senator Craig Thomas (R-WY). Medicare has covered other master's-degreed mental health professionals for years, and given the well-documented need for better access to mental health services for Medicare beneficiaries, the program should cover LPCs on the same basis. Additional information is available on the ACA web page at **http://www.counseling.org/public**. You can also hit ACA's internet legislative action center at **http://capwiz.com/counseling** to quickly identify your Representative and generate a letter on this issue.
- √ Contact your U.S. Senators to urge them to cosponsor the bipartisan "Seniors Mental Health Access Improvement Act," to be introduced shortly by Senators Craig Thomas (R-WY) and Blanche Lincoln (D-AR). The Senate approved this non-controversial provision in 2003, and cosponsorship of the new version of the bill would be an important show of support for its enactment. Hit the ACA internet action center at **http://capwiz.com/counseling** to quickly identify your Senators and generate a letter on this issue.
- √ If you work in a group practice or clinic with a physician or psychologist, contact your state's Medicare Part B carrier to determine what its policy is on counselors providing "incident to" services. A directory of carriers is online at **http://cms.hhs.gov/contacts/incardir.asp.**
- √ For more general information on Medicare and its policies, hit the internet at **http://cms.hhs.gov/medicare/**

Ask your Senator to cosponsor the "Seniors Mental Health Access Improvement Act"

Phone Call / Meeting Outline

[If calling the Senator's D.C. office, first ask to speak to his or her legislative assistant for Medicare issues. Also, be sure to leave your mailing address.]

All Congressional offices are reachable through the U.S. Capitol Switchboard at (202) 224-3121.

1. Introduce yourself (name, address, and professional title), and ask to talk to the staff member who handles Medicare issues for the Senator.

2. Tell the staffer that you'd like to ask the Senator to cosponsor the "Seniors Mental Health Access Improvement Act," bipartisan legislation to be introduced shortly by Senators Craig Thomas (R-WY) and Blanche Lincoln (D-AR). The legislation will improve beneficiary access to mental health services expanding the pool of covered providers for medically necessary care.

3. If possible, relate personal examples of how Medicare beneficiaries (those over age 65 or individuals with disabilities) need better access to mental health treatment, or how you have had to turn away Medicare beneficiaries who wanted to see you. Medicare beneficiaries need better access to mental health services, as shown by the fact that older Americans are the demographic group most at risk of committing suicide. The Medicare coverage of counselors provision, sponsored by Senator Craig Thomas (Republican from Wyoming), would help address this in a low-cost manner.

4. Ask when you can follow up with the staffer to learn what the Senator will do to get involved, and tell the staffer that if she/he has any questions on this issue, to call Dara Alpert with the American Counseling Association's public policy office at 703 823-9800 x242.

5. Thank the staffer for her/his time, and leave your name and postal address, letting the staffer know you'd like to hear back from the Senator on his or her position on this legislation.

6. CALL THE STAFF MEMBER BACK IN 1-2 WEEKS, OR WHEN SHE/HE INDICATES IS APPROPRIATE.

Ask your Representative to consider introducing Medicare counselor coverage legislation

Phone Call / Meeting Outline

[If calling the Representative's D.C. office, first ask to speak to his or her legislative assistant for Medicare issues. Also, be sure to leave your mailing address.]

All Congressional offices are reachable through the U.S. Capitol Switchboard at (202) 224-3121.

1. Introduce yourself (name, address, and professional title), and ask to talk to the staff member who handles Medicare issues for the Representative.

2. Tell the staffer that you'd like to ask the Representative to consider sponsoring legislation to establish Medicare coverage of state-licensed professional counselors, based on legislation to be introduced shortly in the U.S. Senate by Senator Craig Thomas (R-WY). Covering counselors under Medicare would be a low cost way of improving beneficiary access to services, and would go a long way toward helping level the uneven playing field between the master's level mental health professions.

3. If possible, relate personal examples of how Medicare beneficiaries (those over age 65 or individuals with disabilities) need better access to mental health treatment, or how you have had to turn away Medicare beneficiaries who wanted to see you. Medicare beneficiaries need better access to mental health services, as shown by the fact that older Americans are the demographic group most at risk of committing suicide. The Medicare coverage of counselors provision, sponsored by Senator Craig Thomas (Republican from Wyoming), would help address this in a low-cost manner.

4. Ask when you can follow up with the staffer to learn what the Representative will do to get involved, and tell the staffer that if she/he has any questions on this issue, to call Dara Alpert with the American Counseling Association's public policy office at 703 823-9800 x242.

5. Thank the staffer for her/his time, and leave your name and postal address, letting the staffer know you'd like to hear back from the Representative on his or her position on this legislation.

6. CALL THE STAFF MEMBER BACK IN 1-2 WEEKS, OR WHEN SHE/HE INDICATES IS APPROPRIATE.

TRICARE

Program Description

TRICARE is the health care plan for active duty and retired military personnel and their dependents (families). The program covers millions of people around the world. TRICARE is divided into three different plan components: TRICARE Prime (a managed care option), TRICARE Extra (a preferred-provider option), and TRICARE Standard (the fee-for-service plan which formerly constituted the entire program under the acronym of CHAMPUS, for the "Civilian Health And Medical Program of the Uniformed Services").

Counseling Viewpoint

TRICARE covers a wide array of mental health service providers, including psychiatrists, psychologists, clinical social workers, marriage and family therapists, psychiatric nurses, clinical nurse specialists, and licensed professional counselors. All of these providers are allowed to practice independently, with the exception of licensed professional counselors.

Counselors' services are covered only if the client is referred by a physician--any physician--and if the services are supervised by the physician. As a result, seeing clients who are enrolled in TRICARE can be problematic. There is typically a significant amount of paperwork that must be waded through, assuming that you and your client are able to find a physician willing to go through the trouble of providing a referral and signing off on the services you provide. Because of these unnecessary hoops, some counselors have found TRICARE to be a frustrating program with which to work.

The Policy Front

ACA and the American Mental Health Counseling Association (AMHCA) have been working to remove the referral and supervision requirement for professional counselors. In 2000, ACA and AMHCA succeeded in securing the enactment of legislation requiring the Department of Defense to establish a demonstration project allowing professional counselors to practice independently. The demonstration project is now complete, and an evaluation is being reviewed by the Department of Defense.

Representatives Robin Hayes (R-NC) has introduced H.R. 1358, the "TRICARE Mental Health Services Enhancement Act," which would establish independent practice authority for licensed professional counselors, and recognition under other Department of Defense healthcare programs. ACA is working with Rep. Hayes to gain inclusion of H.R. 1358's provisions as part of the fiscal year 2006 Department of Defense spending authorization bill, to be taken up by Congress later this summer.

Counselors are strongly encouraged to contact their Representative to ask him or her to cosponsor H.R. 1358, and to contact their Senators to ask them to support similar provisions in the Senate's defense bill. Professional counselors offer effective, high-quality services, and should be treated the same way as other, similarly-trained providers under Department of Defense programs.

Counselor Checklist

- √ Stay up-to-date on legislation and on the demonstration project--and how you can help--by checking the ACA web page at **http://www.counseling.org/public.**
- √ If you are considering taking TRICARE clients, use the sample letter to physicians concerning supervision and referral.
- √ For more information on the TRICARE program, hit the program's internet site at **http://www.tricare.osd.mil**. Fact sheets included here cover the basics of the program, eligibility criteria, and a listing of regional contractors.

Ask your Representative to co-sponsor H.R. 1358, the "TRICARE Mental Health Services Enhancement Act"

Phone Call / Meeting Outline

[If calling the Representative's D.C. office, first ask to speak to his or her legislative assistant for defense issues. Also, be sure to leave your mailing address.]

All Congressional offices are reachable through the U.S. Capitol Switchboard at (202) 225-3121.

1. Introduce yourself (name, address, and professional title), and ask to talk to the staff member who handles defense health care issues for the Representative.

2. Tell the staffer that you'd like to ask the Senator to cosponsor H.R. 1358, the "TRICARE Mental Health Services Enhancement Act," legislation introduced by Representative Robin Hayes (R-NC). The legislation will improve defense personnel access to mental health services by granting state-licensed professional counselors the same provider practice standards currently enjoyed by all other master's level mental health professionals.

3. If possible, relate personal examples from your practice or community of why defense personnel and their families need better access to mental health services, and why licensed professional counselors should be able to practice in the same way as other master's-level mental health professionals. Explain that H.R. 1358 would increase access to mental health services in a low-cost manner by updating overly bureaucratic policies currently in effect.

4. Ask when you can follow up with the staffer to learn if the Representative will cosponsor the bill. Tell the staffer that if she/he has any questions on this issue to call Dara Alpert with the American Counseling Association's public policy office at 703 823-9800 x242.

5. Thank the staffer for her/his time, and leave your name and postal address, letting the staffer know you'd like to hear back from the Representative on this legislation.

6. CALL THE STAFF MEMBER BACK IN 1-2 WEEKS, OR WHEN SHE/HE INDICATES IS APPROPRIATE.

Ask your Senator to support provisions in the Defense bill to end discrimination against licensed professional counselors

Phone Call / Meeting Outline

[If calling the Senator's D.C. office, first ask to speak to his or her legislative assistant for defense issues. Also, be sure to leave your mailing address.]

All Congressional offices are reachable through the U.S. Capitol Switchboard at (202) 224-3121.

1. Introduce yourself (name, address, and professional title), and ask to talk to the staff member who handles defense health care issues for the Senator.

2. Tell the staffer that you'd like to ask the Senator to support adoption of a provision in the Senate's defense bill to end the TRICARE program's inconsistent treatment of licensed professional mental health counselors. Explain that legislation introduced in the House (H.R. 1358) will improve defense personnel access to mental health services by granting state-licensed professional counselors the same provider practice standards currently enjoyed by all other master's level mental health professionals.

3. If possible, relate personal examples from your practice or community of why defense personnel and their families need better access to mental health services, and why licensed professional counselors should be able to practice in the same way as other master's-level mental health professionals. Explain that H.R. 1358 would increase access to mental health services in a low-cost manner by updating overly bureaucratic policies currently in effect.

4. Ask when you can follow up with the staffer to learn what the Senator will do to support H.R. 1358's provisions within the Senate's Department of Defense legislation. Tell the staffer that if she/he has any questions on this issue, to call Dara Alpert with the American Counseling Association's public policy office at 703 823-9800 x242.

5. Thank the staffer for her/his time, and leave your name and postal address, letting the staffer know you'd like to hear back from the Senator on his or her position on this legislation.

6. CALL THE STAFF MEMBER BACK IN 1-2 WEEKS, OR WHEN SHE/HE INDICATES IS APPROPRIATE.

Sample Letter to Request Referral and Supervision By a Physician for TRICARE Clients

{Date}

{Name}
{Address}

Dear Dr. {name}:

I am a Licensed Professional Counselor and recently had an occasion to work with one of your clients. Although confidentiality does not allow me to reveal the details, I was concerned enough about the process to contact you. (***OR***- I am a Licensed Professional Counselor and am concerned that your clients are not able to fully utilize many of the mental health professionals available in our community.)

One of the major insurance programs in our area, TRICARE, unfortunately does not yet allow Licensed Professional Counselors to practice independently. This is vastly different from most major insurance and managed care companies. LPC's hold ***(modify to match your credentials)*** at a minimum a Master's degree with over 2,000 hours of clinical experience with supervision, and must pass a rigorous licensure test. The professional practice of LPC's includes the diagnosis and treatment of mental and emotional illness, assessment, supervision, consultation, and working with individuals, couples, families and groups. Licensed Professional Counselors frequently practice independently in our state.

TRICARE requires that LPC's treat clients referred and supervised by a physician. Without specific physician supervision I will be unable to meet the needs of those TRICARE clients who cannot afford to pay for services out-of-pocket.

I am interested in exploring with you the possibility of forming a relationship whereby you would be willing to refer TRICARE clients. Attached are my vita, professional disclosure statement and license. I am willing to meet with your staff to explore this further. I believe that supervision activities should be minimal. Please feel free to contact me should you or your staff have questions or need further information.

Sincerely,

SIGNED
YOUR ADDRESS/PHONE

National Health Service Corps

Program Description

The National Health Service Corps (NHSC) was founded in 1970 to help address the health care needs of persons typically unable to access health care services. The Corps is operated by the Health Resources and Services Administration (HRSA), within the federal Department of Health and Human Services. The mission of NHSC and its programs and staff is "To increase access to primary care services and reduce health disparities for people in health professional shortage areas by assisting communities through site development and by the preparation, recruitment, and retention of community-responsive, culturally competent primary care clinicians."

One of the primary programs operated by the NHSC to achieve this goal is its loan repayment program (LRP). The loan repayment program provides up to $25,000 per year for up to two years to health professionals who work in medically underserved areas.

Counseling Viewpoint

Licensed professional counselors are eligible to serve in the NHSC loan repayment program, representing another step forward in recognition for counselors. Although the program is extremely competitive (roughly a dozen counselors are currently participating in the loan repayment program), counselors willing to work in medically underserved areas are encouraged to explore participating in the program.

The loan repayment process is driven by communities. Health care clinics, rural health centers, and other community providers apply for recruitment and retention assistance from the National Health Service Corps for specific types of providers--including primary care physicians, nurse practitioners, dentists, and all other types of providers--and award decisions are then made by NHSC staff. Clinics approved for NHSC recruitment and retention assistance must be located in a designated Health Professional Shortage Area. Once approved, the site will be listed on the NHSC on-line opportunities list, at http://nhsc.bhpr.hrsa.gov/jobs/. The NHSC typically publishes its site application form in the late winter or early spring, after assembling a list of eligible community health centers, clinics, and agencies.

Counselors and other clinicians can then apply for positions at one of the designated clinics or agencies. While employment at an eligible site is a requirement to qualify for the loan repayment program, it is not a guarantee of an award. Clinicians who serve in areas with the greatest need are given award priority. Only providers who are state-licensed or certified are eligible to participate in the loan repayment program.

The National Health Service Corps also administers scholarships under the same framework as the loan repayment program. Funding for NHSC scholarships is even more limited than for loan repayments, and only the most underserved communities and clinics are given scholarship assistance slots.

The Policy Front

ACA is in contact with the Health Resources and Services Administration (HRSA) regarding changing the agency's definition of mental health professional shortage areas to include counts of licensed professional counselors. Including counselors in this process will increase the accuracy of shortage area designation.

Counselor Checklist

√ Find out more about the NHSC loan repayment and scholarship programs by contacting the agency at 1-800-221-9393, by sending an e-mail to "nhsc@hrsa.gov," or go-online at **http://nhsc.bhpr.hrsa.gov/.**

HIPAA Health Privacy Regulations

Program Description

Enacted in 1996, the "Health Insurance Portability and Accountability Act" (HIPAA) contained a number of provisions addressing shortcomings in the private health insurance market. Included in HIPAA were provisions calling for the establishment of regulations to A) improve the efficiency of health insurance by standardizing the administration of health insurance benefits, and B) set standards for the protection of health information privacy.

The Clinton Administration's Department of Health and Human Services issued privacy regulations in December of 2000, following a lengthy regulatory process and involving the publication of draft standards in November of 1999 and the consideration of roughly 50,000 public comments. After taking office in 2001,however, the Bush Administration announced it was considering significant changes to the privacy regulations, in order to lessen their impact on health plans, hospitals, and other care providers. Final changes--including the removal of provisions requiring patient consent for routine use of health information--were adopted under a final regulation published in August of 2002.

The HIPAA privacy standards give health care consumers important new rights and protections, and have changed how counselors maintain records, notify clients, communicate with insurance and other payers, and disclose information. Separate HIPAA regulations require those health plans, health care providers, and health information clearinghouses which transmit health information electronically to do so in compliance with specific standards. The electronic data transmission standards do not require health care providers to submit and process transactions electronically.

Counseling Viewpoint

The privacy regulation has had a significant impact on the practice of counselors and all other health care providers. Following is a discussion of some of the major components of the regulations. More information is available through ACA. The complete set of issues of the two-year HIPAA Compliance subscription service are available through ACA member services at 1-800-422-2648 x222. Further information regarding the HIPAA compliance material can be obtained by contacting Debbie Beales with ACA's Professional Affairs office at "dbeales@counseling.org".

Scope of the Privacy Regulations

The privacy regulations apply only to a relatively narrowly-defined list of "covered entities," described below. The privacy regulations do not override state laws or regulations which are more protective of privacy, and thus serve as a "floor" rather than a "ceiling" of protection. Consequently, those counselors affected by the regulations will need to determine in which cases their state practice laws and regulations will take precedence and in which cases the federal regulations will take precedence. The privacy regulations do not affect student records and regulations under the Family Education Rights and Privacy Act (FERPA).

Generally, the privacy regulations allow use of personal health information without the individual's consent for day-to-day uses related to providing and paying for health care services. Outside of these "routine" uses, the regulations generally require that those using an individual's personal health information obtain the individual's authorization before doing so. The regulations generally do not *require* the sharing of information, but instead specify instances in which information *may* be used or disclosed by covered entities.

Covered Entities

Counselors first should verify that they are "covered entities" (CE) according to the act. Covered entities include three major categories: health plans that include over 50 enrolled persons; health care clearinghouses; and certain health care providers.

Health care providers are considered "covered entities" under the regulations and must abide by their requirements if they use computers to transmit any health claims information. Once providers submit even one claim electronically, or have an employee or billing service do so on their behalf, they become a CE and must follow HIPAA regulations for all their records. Also, all health care providers who work for an agency or clinic that submits records electronically are considered covered entities. The federal Centers for Medicare & Medicaid Services (CMS) has prepared an on-line flow chart to assist providers in determining if they are a "covered entity," available at **http://www.cms.hhs.gov/hipaa/hipaa2/support/tools/decisionsupport/default.asp**.

Although some counselors who see only self-pay clients and who conduct all transactions via paper and the U.S. Mail may not be covered entities, it is best to err on the side of caution. Even sending e-mails containing basic client information may be considered electronic transmission, triggering a requirement for compliance. Also, counselors should be aware that the privacy regulation will effectively establish a set of client expectations regarding provider and health plan privacy practices.

Use of Health Information for Treatment, Payment, and Health Care Operations

The final privacy rule allows health plans, health information clearinghouses, and health care providers to use and disclose an individual's health information *without* the individual's consent for purposes of health care treatment, payment for services, or health care operations.

Although "treatment" and "payment" are relatively straightforward, the definition of "health care operations" deserves some attention. The regulations define "health care operations" to include virtually any conceivable business task associated with operating a health care plan, such as underwriting, premium rating, conducting or arranging for medical review, reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance or health plan performance, conducting case management, quality assessment and improvement activities, development of clinical guidelines, resolution of internal grievances, business planning and development, customer service, training of non-health care professionals.

Health care professionals have the option of seeking an individual's consent for use of health care information for these routine purposes, but do not have to do so. Uses of an individual's health information outside of treatment, payment, and health care operations generally require an explicit authorization from the individual, and health plans may not condition coverage of services on receipt of an authorization for such non-standard uses of health care information.

Health care providers who are covered under the privacy regulation must also comply with the Department of Health and Human Services' data standards for the electronic transmission of health information.

Although the privacy regulations, the electronic data standards, and a related health information security regulation all focus on those who transmit information electronically, the regulations do not require health care providers to do so. However, with the establishment of the privacy regulations and the electronic data transmission standards it is increasingly likely that third-party insurers will require their participating providers to transmit and receive claims-related information electronically.

Psychotherapy Notes

Psychotherapy notes are treated with even stricter requirements than other health care information under HIPAA, and generally are to be excluded from individuals' regular medical records. Psychotherapy notes are defined by the regulations as follows:

> *Psychotherapy notes* means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. *Psychotherapy notes* excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the folowing items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

The mental health advocacy community strongly supported excluding psychotherapy notes from the medical record. All too frequently, therapists were being required by health plans to divulge highly sensitive personal information regarding their clients as a condition of getting services paid for. The privacy regulation would put a stop to this, explicitly prohibiting health plans from conditioning payment for services on receipt of psychotherapy notes. Although this is an improvement in confidentiality for mental health consumers, complying with the regulation in many cases will mean that therapists will need to separate their psychotherapy notes from the more basic treatment information they maintain. Therapists may share their psychotherapy notes with their clients, but are not compelled to do so by the privacy regulation.

Client Rights

HIPAA greatly increases access to health care information for all health care consumers. Under HIPAA, clients generally have the right to inspect, obtain a copy of, and request amendments to their protected health information. Covered health care providers may deny clients access to their psychotherapy notes. However, providers must generally allow consumers access to the rest of the medical record, except under certain circumstances. Consumers may also request a record of the disclosures made of their health information, aside from those made for purposes of treatment, payment, and health care operations. Consumers must also be provided with a notice of the health information use practices of their health plan and health care providers.

Counselor Responsibilities

The privacy regulations lay out several requirements for covered health care providers, including counselors. Most of these responsibilities are congruent with standard ethical practices. Health care providers' major responsibilities include:

- providing clients with a notice of their health information use practices, and of their clients' rights with respect to health information;
- appointing a privacy officer (which can be themselves);
- accounting for disclosures of health information to third parties;
- establishing reasonable health information use practices to safeguard information.

It is important to note that the privacy regulations' various requirements are "scalable": the compliance steps required of a large teaching hospital will be more extensive than those of a group practice, which will be more extensive than those of a solo practitioner with a part-time bookkeeping assistant. In the case of large group practices and health care clinics, compliance with the privacy regulations will likely be spearheaded by the practice or clinic's management. For smaller practices, the level of involvement--and familiarity level with the regulations--of the individual practitioners may be greater.

Enforcement

HIPAA establishes civil and criminal penalties for violations of the regulation, including a $100 civil penalty up to a maximum penalty of $25,000 per year for each standard violated. Criminal penalties are imposed for certain wrongful disclosures of health information, graduated up to a maximum of $250,000 for the most serious offenses. Complaints may be filed against covered entities any person who believes the entity is not adequately complying with the regulations.

Aside from the issues briefly discussed here, HIPAA has numerous other provisions regulating such issues as "marketing" to clients using their health information, minor's rights, participation in research, law enforcement and public health agency access, business associates, directories, notification of next of kin, and fundraising. Counselors are encouraged to familiarize themselves with HIPAA's privacy and security regulations in order to avoid potential penalties or liability.

The Policy Front

No further significant changes to the regulations are anticipated. The Department of Health and Human Services Office of Civil Rights is entrusted with enforcing the regulations, and is expected to issue guidances on privacy issues as needed. Counselors are encouraged to stay up-to-date with developments regarding the regulations, and to contact ACA with specific questions.

Counselor Checklist

- √ Purchase the full set of 24 HIPAA Compliance legal analyses and sample materials, covering such topics as notice and consent forms, sample contract addenda, compliance checklists, psychotherapy note maintenance, and others by contacting ACA member services at 1-800-422-2648 x222. More information regarding ACA's HIPAA resources is available through Debbie Beales in ACA's Professional Affairs office at "dbeales@counseling.org."
- √ Learn more about the regulations by hitting the HHS web site at **http://aspe.hhs.gov/admnsimp/**. Information is also available at **http://www.hhs.gov/ocr/hipaa/**.
- √ Another good source of information is the Health Privacy Project, on the web at **http://www.healthprivacy.org**. The site includes a summary of the privacy rule which is far shorter and more readable than the actual regulation.
- √ Determine if you are a covered entity by looking at the on-line compliance tool at **http://www.cms.hhs.gov/hipaa/hipaa2/support/tools/decisionsupport/default.asp** .
- √ Attend workshops about HIPAA and offer in-service training for all your staff to ensure understanding of the new HIPAA regulations.

Counseling Works!

The Need

- It is estimated that 30% of Americans, or 52 million people, have some type of mental health or substance abuse disorder every year. Depression affects 10% of Americans. (1)
- In 2000, an estimated 4.7 million people aged 12 or older needed treatment for an illicit drug abuse problem. Of those needing treatment, only 0.8 million people (16.6% of those in need) actually received substance abuse treatment. (2)
- Unipolar major depression is the leading cause of disability in the world. (3)
- Less than half of the children and one-third of the adults who have a diagnosable mental disorder receive treatment in any one year. (4)
- One in five children are estimated to have a mental health problem causing mild to moderate impairment. An estimated one in twenty children (three to four million) have a serious emotional illness, severely disrupting their functioning. (4)
- Twenty percent of adults over age 55 experience a specific mental disorder, while only one-third of those living in the community receive mental health services. (4, 5). Of the elderly who commit suicide, more than 70 percent had visited a primary care physician within a month before their suicide, and 20 percent had done so the same day. (6)

The Response

- The National Institute of Mental Health has shown that the success rates of treatment for disorders such as depression (70-80%) and panic disorder (70-90%) surpass success rates for other medical conditions (Heart disease, for example, has a success rate of 45-50%). (7)
- Mental health services for students can prevent violence by preventing problem behaviors from developing, identifying and serving at-risk kids, and reducing the harmful effects of violence on victims and witnesses. (8)
- With the investment of $1 in treatment for substance abuse, taxpayers save $4-7 in reduced drug=related crime, criminal justice costs, and theft. When savings related to healthcare are taken into account, savings increase to a ratio of 12:1. (9)

The Professionals

- Nearly 90,000 professional counselors are licensed or certified in the U.S. Requirements typically include: a master's or doctoral degree in counseling from an accredited institution; 3,000 hours of supervised clinical experience; passing a state examination; and following a code of ethics in professional practice.
- As early as 1994, research by *Business Insurance* found that over 80% of managed behavioral health care companies either employed or covered services of professional counselors.
- Professional counseling practice includes: the diagnosis and treatment of mental and emotional disorders, including addictions; psychoeducational techniques aimed at the prevention of these disorders; assessment and evaluation of functioning; consultation to individuals, couples, families, and groups; and research into more effective therapeutic treatment modalities.
- Professional counselors are trained in the provision of counseling and therapy, as well as the etiology of mental illness and substance abuse disorders.

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